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THE NEW YORK CITY TRANSIT SYSTEM: PUBLIC OWNERSHIP, CIVIL SERVICE, AND COLLECTIVE BARGAINING

IN June 1940, the long movement toward rapid transit unification in New York City was consummated. The municipality became the complete owner and operator of the world's largest rapid transit system, which on each business day carries more than six and a half million passengers through the efforts of about thirty-two thousand employees. The administrative problems that appear where government becomes an entrepreneur and manager had indeed been present since 1932, when the city began to operate the Independent subway—one of three major elements merged in the New York City Transit System. But unification raises in full force difficult questions in the adaptation of governmental concepts and procedures to the conduct of economic undertakings. Especially pressing is the issue of labor, involving the applicability of civil service to public enterprise and the place of collective bargaining in this context. A setting of crisis results from the fact that the collective labor agreements entered into by the absorbed private companies expire June 30, 1941. In providing a background for the immediate controversy, it is appropriate to speak briefly of unification and then of the administrative structure of the city-owned system, before passing to civil service, collective bargaining, and the perplexities of a labor movement under public ownership.

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I

The barest summary of rapid transit construction and unification will suffice to reveal certain aspects which have influenced administration under city ownership.[1]

The subways of New York involved mixed ownership from the outset. This condition was the fruit of necessity rather than doctrine. Like the adoption of the underground method itself, it was reached with early prescience but haltingly. The expectation of purely private financing was still reflected in the basic Rapid Transit Act of 1891.[2] No bids were forthcoming when routes were expectantly laid out. An amendment to the law in 1894 (adopted in referendum by a vote of more than three to one) permitted municipal financing of the initial construction attended by private provision of equipment and operation under leases for limited periods.

A contract based on collaborative financing was at last arranged in 1900 with what became the Interborough Rapid Transit Company (IRT). This group soon leased the Manhattan elevated lines for 999 years. In 1902 a second contract provided for the extension of the original subway into Brooklyn. The enhanced value of rapid transit franchises at this stage was reflected in the lessened share of city financing and the shorter period of the lease under the second contract. The first subway link was opened in 1904 and by 1908 the whole of the original network was in operation.

[1] The intricate financial history of rapid transit and the events leading to unification have been carefully analyzed by Dr. Arthur J. Waterman, Jr., in a still unpublished dissertation submitted at New York University in April 1940, under the title "Integration of Rapid Transit Facilities in the City of New York". A partial summary of one chapter appeared in Dr. Waterman's article, "New York City Solves Transit Problems", *National Municipal Review*, November 1940, vol. 29, pp. 728-35, 766. *Municipal Reference Library Notes*, June 19, 1940, vol. 26, pp. 49-60, carried an annotated list of selected references to rapid transit, 1927-1940.

[2] L. 1891, ch. 4, technically applicable to cities containing more than one million inhabitants. L. 1941, ch. 800 codified this act and its amendments, together with provisions from articles 7 and 8 of the public service law; the codification constitutes chapter 48a of the consolidated laws.

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But the need for rapid transit outstripped its fulfilment. In 1909 the law was amended to permit the insertion in subway contracts of provision for the recapture of facilities, after ten years from completion, on the payment of the cost plus fifteen per cent. Meanwhile extensive plans had been drawn under what was then the Public Service Commission of the first district which had absorbed the functions of the Board of Rapid Transit Commissioners. But no bids were forthcoming for straight private construction and operation on the terminable contract basis. Progress again depended on the city's participation. The Brooklyn Rapid Transit Company (later, part of the Brooklyn-Manhattan Transit Company, or BMT) appeared in 1911 with proposals for subway development and for additions to the Brooklyn elevated system. A division of the rapid transit field between the IRT and the BMT was embodied in the "dual contracts" approved in the spring of 1913. The city supplied most of the money for the construction of the subways, which the companies agreed to equip and to operate under leases and to run normally for forty-nine years with no privilege of renewal and subject to recapture ten years after completion; they also undertook to improve and extend their own lines. The fare was to be five cents. Major portions of the new dual system were in operation by 1918; construction was virtually complete in 1920, although the last link was not opened until 1931. Under the dual contracts the subway trackage was doubled.

Even before 1920 the necessity of new facilities was felt. The office of Transit Construction Commissioner was established in 1919. It was superseded in 1921 by the Transit Commission. Home rule in the leadership of subway construction asserted itself in 1924 in the creation of the city-appointed Board of Transportation, although the state-controlled Transit Commission survived with important powers of approval. Under the board various suggestions crystallized in the plan for a third subway system—the Independent—to be constructed wholly by the city but not necessarily to be operated by it. Work on this system began in 1925; a stem of twelve miles was put in operation in the fall of 1932; and by late

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1940, when trains began to run on the Sixth Avenue line, construction was almost complete. The city had invested a billion dollars in underground railways; it had put $795,333,805 into the Independent alone.

The opening of the Sixth Avenue subway was symbolical of converging tendencies. The route lay under one of the earliest elevated railway structures, now demolished; if its removal could have been arranged before the beginning of subway construction five million dollars spent in securing its foundations might have been saved. Large-scale rapid transit extension itself was nearly at an end, at least until new financial conditions might arise. Meanwhile the city had been operating the Independent Subway System (ISS) since 1932, for no responsible bidders appeared to undertake its private management. The emphasis in rapid transit passed to the unification of existing facilities under public operation.

Unification was first officially endorsed in 1921. The position of the companies amid rising prices already disposed them to be receptive. Governor Nathan L. Miller recommended "a completely unified system of transportation for the City of New York", declaring that "profitable parts of the system must maintain the unprofitable." He envisaged the realization of the policy under authoritative state auspices. The solution was destined to be less sweeping, and for nearly twenty years the intermittent cycles of planning and negotiation were impeded by the exhaustion of the city's borrowing capacity and by friction between city and state. With the opening of the Independent in 1932 the city's bargaining position was strengthened, while in the same year the IRT passed into a receivership from which it had not emerged at the time of unification eight years later. Until 1938, plans for unification were based mainly on the credit of the enterprise, not of the city, and in some schemes the proposed board of transit control (conceived as a public corporation that would operate the lines under long lease from the city) was to include company representatives. A constitutional amendment in 1938 authorized the issuance of city securities up to $315,000,000 outside the debt limit for the acquisition of transit facilities. Agreements

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with the companies were concluded in 1939 for an over-all price of $326,248,189.[3] The transfer of ownership was completed in June 1940.[4]

The sudden swelling of the city's administrative task is measured by noting that, whereas at the end of June 1939, city-owned and operated transit involved 180 miles of single track and 5,689 employees, a year later there were 1,244 miles and 31,985 employees.[5] Besides the lines themselves, the city had taken over three power plants which in the previous year had consumed one million tons of coal and generated 1,600,000,000 kwh.

Unification thus far, however, embraces little beyond rapid transit. It contrasts doubly with the scheme of the London Passenger Transport Act of 1933;[6] for in New York City

[3] The figure was $110,000,000 below the outlay proposed in the 1936 Seabury-Berle plan. Indeed, since the BMT's street railway and bus line properties (organized as the BQT) were included in 1939, the sum allocated for them being $27,000,000, the saving was $137,000,000. The Comptroller reported that by inviting tenders of company securities an additional $7,314,678 was saved. *Message of the Comptroller of the City of New York to the Board of Estimate concerning the issuance of city bonds in connection with transit unification,* June 12, 1940, p. 3.

[4] The BMT–BQT Unification Plan, stipulating an upper price of $175,000,000, was promulgated April 12, 1939 and, after hearings, was approved by the Transit Commission on June 27 and by the Board of Estimate on June 29. The IRT-Manhattan Unification Plan, setting an upper price of $151,248,187, was promulgated on July 25, 1939 and, after hearings, was approved by the Transit Commission on August 29 and by the Board of Estimate on August 31. The existence of a receivership complicated some of the procedures; the approval of the federal district court was given on March 12, 1940. The requisite action having been taken in the case of each plan by the specified proportion of security holders (for the recapture method was not being used), the BMT–BQT plan was effective on June 1, 1940 and the IRT plan on June 12.

[5] Altogether, late in 1940, the city's rapid transit operations included 52.5 miles of route in the Independent Division, 98.4 in the IRT Division, and 99.8 under the BMT Division, both of the last two mileages embracing elevated as well as subway lines. In addition, under the BMT Division, the city had taken over trolleys that (with 1,358 cars) covered 217.4 route miles and 316 busses operated on 79.7 route miles.

[6] 23 Geo. 5, ch. 14. See Herbert Morrison, *Socialisation and Transport* (London, 1933); W. A. Robson (ed.), *Public Enterprise* (London, 1937), "The London Passenger Transport Board", by Ernest Davies, pp. 155-209;

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unification is not inclusive nor does it extend beyond the political boundaries of the city. In measuring the value of so limited an integration the relative importance of rapid transit in New York City is hardly a complete defense although undoubtedly a momentous consideration. Here rapid transit facilities carry 60 per cent of the traffic, busses 21 per cent, and street cars 19 per cent; whereas in London busses account for 58 per cent, trams and trolley busses together for 29 per cent, and rapid transit for the remainder.[7]

The potentialities of unification, even within the limitations of the New York City scheme, are still to be explored. Quick magic is hardly possible in a frame fixed largely by the coordinates of a five cent fare and a nearly stable volume of traffic, although—especially in terms of the need for feeder extensions—the network is doubtless far from saturated.[8]

The unification plans as adopted were silent on the question of fare. A five cent fare was assumed but without legal commitment to the former owners, who were bought out on the basis of the general credit of the city, not transit earnings. The power to fix the fare rests in the Board of Estimate, acting upon the plans of the Board of Transportation. The Plan of Operations approved by the Board of Estimate on May 16, 1940 stated: "The passenger fare shall be five cents."

Traffic on the combined facilities of the system during the half-year ending December 31, 1940 was very slightly below traffic on the same facilities in the corresponding period in 1939, the total passengers in the second half of 1940 being 1,101,750,689—10,024,063 below the figure for the last six

Terence H. O'Brien, *British Experiments in Public Ownership and Control* (London, 1937), pp. 202-22; Lincoln Gordon, *The Public Corporation in Great Britain* (London, New York and Toronto, 1938), pp. 245-316.

[7] *Transit Journal*, March 1940, vol. 84, p. 80.

[8] Some relief of the pressing need for equipment is expected under L. 1941, ch. 507 (Ass. Int. 1778, Pr. Nos. 2117, 2762), liberalizing the formula for the exclusion of "self liquidating transit facilities", perhaps yielding an increase of $25,000,000 or less in borrowing leeway for transit purposes.

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months of 1939.[9] Passenger revenue amounted to $55,112,586 in the second half of 1940, being down $456,869 from the total in the corresponding period of 1939. Increases were shown only on the Independent Division (the Sixth Avenue line having come into operation in late 1940) and on the trolleys and busses of the BMT Division. The ratio of operating expenses to revenue was up very slightly for the system as a whole.[10]

For the New York Transit System, during the first six months of operation, the excess of revenues over operating expenses was $13,558,254.95. But "expenses" in this connection does not include carrying the debt. The mayor's budget message of April 1, 1941 stated that the aggregate of outstanding bonds for construction and unification was $1,150,697,671, requiring a debt service of $57,333,506 for the following fiscal year. The income of the New York Transit System was estimated at $28,351,000, being the anticipated excess of operating revenue and non-operating income over operating expenses. Such income would fall short by about half of meeting the carrying charges on the transit debt. Before unification the annual appropriation for such debt was about thirty-three millions. With due allowance for collateral effects on taxation, unification saves the taxpayers about three million dollars yearly.

[9] Source for these and other data in the paragraph above: City of New York, Board of Transportation, *New York City Transit System and Other Operations, Financial and Statistical Report*, December 1940.

[10] The ratios of operating expenses to operating revenues for various elements in the system and for the system as a whole were as follows for the two periods:

	July 1 to Dec. 31, 1939	July 1 to Dec. 31, 1940	Incr. or decr.
BMT			
Rapid transit	71.56	67.52	—4.04
Trolley	81.39	75.63	—5.76
Bus	74.70	72.12	—2.58
Total	73.82	70.70	—3.12
IRT	76.61	82.80	6.19
INDEPENDENT	75.89	73.77	—2.12
Total rapid transit operation	74.96	76.17	1.21
Total N Y C Transit System facilities	75.25	75.94	0.69

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It is not necessarily uneconomical to subsidize the mass movements of the people of New York City. Despite the many careful analyses already made of transit problems, there remain questions of fact as well as of judgment in over-all planning regarding the effect of fare increases on the volume of traffic and on the geographical pattern of the city's business. Unfortunately, especially in the pending labor issue, thinking is bedeviled by memories of company earnings in their days of prosperity, the negligible returns to the city on its vast investment during the whole period of private operation, the unification settlements, and the surviving effects on the burdens that must now be carried.

These financial limitations throw the emphasis even more heavily on the administration of the network, centering in the Board of Transportation.

II

In the years of discussion of rapid transit building and unification, the administrative aspects of public operation have received at best secondary attention.[11] The crux of the analysis has been financial. Credit has been the controlling factor in structural forms. While the city was without leeway to borrow for unification, and when it seemed that the companies must be largely compensated in the securities of the transit system itself, the emphasis was upon autonomy; some schemes for the proposed board of transit control provided that the bondholders not only should have routine representation but also should be entitled to the extraordinary remedy of throwing the system into the hands of a smaller board of managers to act in their behalf.

After the constitutional change of 1938, unification advanced on the assumption of municipal operation through the existing Board of Transportation, which had been created in

[11] In the mimeographed *Studies on Transit Unification in the City of New York*, prepared for the Citizens' Budget Commission in part by Le Roy T. Harkness, special transit counsel, issued September 30, 1936, it is remarked: ". . . attention has been so concentrated upon other features of unification that the important question of how the road shall be operated has been allowed to go practically by default."

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1924,[12] originally as the city's developmental agent to lay out and secure the construction of rapid transit lines. The board consists of three members, residents of the city, who are appointed by the mayor for six-year terms. The mayor designates one of the members as chairman during the latter's term of office. The mayor may remove a member "for inefficiency, neglect of duty or misconduct in office, giving him a copy of the charges against him and an opportunity of being publicly heard in person, or by counsel, in his own defense, upon not less than ten days' notice." Further, "if such member shall be removed, the mayor shall file in the office of the city clerk a complete statement of the charges made against such member, and his findings thereon, together with a complete record of the proceedings." The salary of board members is fixed by the Board of Estimate and may not be decreased during the term of office of a member; the salary is now $20,000. A majority of the three members may act for the board in any matter. Under the law stated meetings must be held at least once a month; in practice the board acts frequently as a body. It has not attempted to popularize its doings.[13]

When the Board of Transportation failed to lease the line it had constructed, it became increasingly involved after 1932 as the manager of a railway system. The law recognized a bifurcation in its staff.[14]

> The Board of Transportation [it is said] is empowered to organize an operating division for the operation and maintenance of a publicly owned and operated railroad, separate and distinct from the organization engaged in planning and supervising the construction and equipment of railroads prior to operation, and is hereby authorized to establish and specify the duties and the

[12] L. 1924, ch. 573. The composition of the Board of Transportation is now set forth in Article II of the Rapid Transit Act as codified by L. 1941, ch. 800.

[13] The law states that "all proceedings of the board and all documents and records in its possession shall be public records, and open to public inspection, except such documents and records as shall be prepared by or for the counsel for use in actions or proceedings to which the city or the board of transportation is a party."

[14] L. 1935, ch. 775.

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> regulations which shall govern the work and conduct of employees in such division and the penalties which may be imposed for disobedience of or violation of such regulations. . . .

At the top, the separation is unreal, in view of the extent to which the board concerns itself with detail. Its calendar is a double one: for construction and operations. Once each week the board meets with all division heads at hand. The board is in a sense itself the general manager but this statement must be qualified by observing how far John H. Delaney, chairman since 1924, has in fact been the board.

John H. Delaney has been an arresting phenomenon on the border line between politics and administration. He has dominated, not the board only since 1924, but even the whole city government's relation to transit during most of the time since 1919, when Governor Smith appointed him to the newly created post of Transit Construction Commissioner. The duties of this position passed to the Transit Commission in 1921 but three years later Mr. Delaney (who meanwhile had headed the city dock department) was again at the helm as chairman of the Board of Transportation. Successive mayors have renewed his appointment. In 1941 (when Mr. Delaney reached the age of seventy) Mayor LaGuardia acted to postpone his retirement for two years. Originally Mr. Delaney came out of the printing trades and he holds the card of the Typographical Union.[15] He rose by way of reporting, trade journalism, politics, and successive and varied demonstrations of discreet competence. At one stage public advancement seemed to partake of the token recognition by which Tammany historically maintained labor contacts. In the early days Mr. Delaney was reputed to be an informal right-hand aide for Leader Charles F. Murphy. From 1913 to 1915 he was State Commissioner of Economy and Efficiency. He was Commissioner of Plant and Structures in New York City when named as Transit Construction Commissioner.

[15] A typical jibe in the *Transport Workers Bulletin*, October 1937, spoke of "this spurious symbol that he has treasured through the years and waved as an answer to the accusations that were lodged against him. . . ."

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The extent to which successive city administrations have made Mr. Delaney their mind on transit has testified to more than the absorbed interest he developed in transportation problems; it has been a sign of the need in these matters for intense and continuous attention. Yet for some Mr. Delaney's self-dedication, interesting as an example of the reflex of a job, was not without baffling features; for Mr. Delaney perhaps never quite ceased to be a party man, although distantly and vicariously. Outstanding as an administrator, not a technician, he has nevertheless been subject to the limitation of over-personalizing his keen and indefatigable sense of responsibility. Withdrawn yet aggressive, jealous as well as zealous, he has created a physical system but hardly an organization.

The other members of the board, though serving full time, have been much less important. Frank X. Sullivan, a member since 1926, was a lawyer who had been counsel to the state organization of the A. F. of L. unions. Active in politics, he was at one time Commissioner of Public Works in the Borough of Queens. It has not helped the Board of Transportation's relations in recent years with a CIO group that Mr. Sullivan's personal assignment to questions of organization has included personnel. The third place on the board, politically held in the early years, was vacant for some time. In 1940, a few months before final unification, it was filled by the appointment of George Keegan, then general manager of the IRT. He was a railroad career man; the Interborough president, it was said, had "discovered" him in Chicago as a young man. Within the Board of Transportation Mr. Keegan's personal assignment has been to operations but the rôle allowed him, or assumed by him, has not been as important as some city officials expected.

In conducting the unified system, the Board of Transportation acts under what is called a Plan of Operations. This was adopted pursuant to an amendment to the Rapid Transit Act in 1940 which stated that if operation by contract was found inexpedient by either board, "the Board of Transportation shall devise and prepare a plan for the maintenance and operation

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by the Board of Transportation of any railroad which such city owns . . . and any combination of city-owned railroads." [16] On May 3, 1940, the Board of Transportation resolved that it would be "inexpedient, impracticable and prejudicial to the public interest" to operate by contract the properties soon to be acquired and it sent to the Board of Estimate a "plan for maintenance and operation of all transit facilities owned and to be acquired by the City of New York". This was duly approved by the latter board on May 16. The plan is a statement of a few canons of relationship and procedure, not of an organizational scheme. It contains the broad authorization that "the Board of Transportation shall from time to time formulate and adopt such Rules and Regulations as are appropriate and lawful to regulate and govern the work and management in conformity with the provisions of all applicable laws."

Perhaps the most important canon is the emphasis upon a divisional pattern which respects the preëxisting entities. On this the plan stated: "The Board will continue for an indefinite period of time the operation of the Independent, the Interborough, the Brooklyn-Manhattan and the Brooklyn-Queens Systems as separate divisional units, by practically the same supervisory and subordinate forces of employees as are in place when the Unification Plans become effective." The section concludes, almost apologetically, "some administrative functions must necessarily be centralized, such as control of revenues and disbursements, purchases, employment, accounting, audit, litigation and general management." [17] For "informative purposes" the accounting methods are arranged "so as to segregate and disclose the financial results of operation and maintenance of each separate division of the united transit system, and the joint financial results of such operation. . . ."

[16] L. 1940, ch. 560.

[17] The Plan of Operations states: "An adequate central headquarters building is an essential unit in the unification scheme of reorganization." But the expressed idea of immediate construction of such a building has been postponed.

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So far as the operations have a managerial focus apart from the board and its chairman, it is in the person of Philip E. Pfeifer, general superintendent. In 1932 he was brought from the private railway field to head operations on the city-owned ISS and he has been promoted to his present position, which is now classified. His salary of $18,000 is one of eighteen annual salaries of $10,000 or more under the Board of Transportation, not including those of board members.[18]

As an organization, the Transit System is still in transition, deliberately held in a state of union without unity. It remains to be seen whether the centralization that reflects the personal traits of the chairman and the compounded structure intended to ease the shift of ownership will in time give way to a combination of devolution and integration. Meanwhile, the outstanding administrative innovation is the assimilaton of erstwhile private enterprises to the conditions of civil service.

III

The Plan of Operations approved on May 16, 1940 provided: "The salaries and wages of employees shall be fixed by the Board of Transportation." The plan also said: "Approximately 29,000 employees of the unified companies will be given appropriate civil service titles, and the rates of salaries and wages will be fixed at amounts not less than the present rates, with few exceptions. . . ." It was further stated: "Those employees who work on the elevated lines that are to be demolished will be assigned to other positions without reduction of pay."

The shaping of personnel methods in the city-operated transit system has been predisposed, if not absolutely controlled, by the existence in the state constitution of an almost unique merit system provision, as follows: "Appointments and promotions in the civil service of the state, and of all of the civil divisions thereof, including cities and villages, shall be made

[18] *The Civil List* (special section of the *City Record*), "Officials and Employees of the City of New York. . . . From April 1, 1940 to March 31, 1941." Mr. Pfeiffer's salary is exceeded by that of the chief engineer of the board, who is concerned with construction; his salary is $20,000.

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according to merit and fitness to be ascertained, so far as practicable, by examinations, which, so far as practicable, shall be competitive."

The scope and nature of these requirements have not been directly construed as they might affect public enterprises to which the legislature expressly sought to give the fullest measure of autonomy.[19] To be sure, the trend of judicial decisions has treated the language as sweepingly inclusive.[20] In its present application to the Board of Transportation the implications of the clause have been pushed even further than the board has wished, as in denying that it could secure medical service by contract rather than by competitive examination, where the latter method was admitted to be practicable.[21]

The operation of the ISS after 1932 afforded experience in the installation of civil service. At the outset the scheme was not required; only on January 1, 1935 was the competitive classified principle applied. Meanwhile recruiting went on in the discretion of the board. Experience was an essential and some seasoned men were obtained from the private transit lines. The depression was on, moreover, and not a few good railroad men were on furlough. Political clearance seems to have been imposed at some points near the top; at the bottom, too, foremen sometimes had the impression that menial labor was "sent over". But these tendencies, so far as they existed, were checked by wholesome fear and respect in all quarters for the technical and ticklish business of conducting an organization that must hang together and be able safely to send a man

[19] It has been taken for granted, apparently, that interstate bodies like the Port of New York Authority were exempt. The issue of inescapable necessity of civil service in public enterprises within the state has not been squarely raised. Theoretically, there are at least two possible bases for relaxation. First, the constitutional language need not be held to mean that the examinations must be administered by civil service commissions of general jurisdiction; an enterprise might be allowed to have its own self-administered merit scheme. Second, the corollaries of civil service might be held to vary with the attributes of different types of governmental activity.

[20] Palmer v. Board of Education of Union Free School District No. 2, Town of Geddes, 276 N. Y. 222 (1938).

[21] Turel v. Delaney, 285 N. Y. 16, 32 N. E. (2nd) 774 (March 6, 1941).

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hurtling through the signal-dotted dark in charge of a thousand lives and ten cars worth half a million dollars. Before the public opening of the first dozen miles of line, the assembled personnel was seasoned further by running the system for a while without passengers.

A resolution of the Municipal Civil Service Commission in 1934 placed employees of the Independent system under the competitive civil service as of January 1, 1935.[22] The existing personnel was covered in. The classification of all positions went forward and was substantially complete in 1938. Inasmuch as the system was being put in operation piecemeal, the Municipal Civil Service Commission was able to examine half or more of the employees of the completed system.

The handling of personnel, after unification, was anticipated by the so-called Wicks Act of 1939.[23] The bitter criticism leveled at this measure by the Transport Workers' Union belongs later in the discussion. Suffice it here to observe that, although the act was a concession to the existing personnel of the private lines in point of its stress on continuity and the relative completeness with which it proposed to cover in such personnel, it offended mainly because it failed to recognize

[22] The law of 1935 that provided for a separate division of operations under the Board of Transportation stated that "appointments and promotion to any position in such division shall be subject to the provisions of the civil service law". As set down in the Rapid Transit Act as codified by L. 1941, ch. 800, sec. 14, the words "in any class of employment" are added. The provision continues: "Employees holding positions in such operating division shall be notified in writing of any charge or accusation of dereliction of duty which is to be considered by the board of transportation, and shall be allowed at least five days for answering such charge in writing and be entitled to a hearing thereon, at which he shall be entitled to be represented by a person of his own choosing. If in the judgment of the board such charges of delinquency or misconduct are sustained, such employee may be suspended without pay for a period not to exceed thirty days, or may be dismissed from such employment as provided in section twenty-two of the civil service law. The board may temporarily suspend without pay any such employee charged with dereliction of duty pending hearing on any such charges, but if the board shall determine that such charges are not sustained by the evidence adduced at the hearing thereon, the employee so suspended shall be entitled to pay for the time of such temporary suspension." The numbers dismissed from the ISS after hearing of charges were 19 in 1937, 27 in 1938, and 54 in 1939.

[23] L. 1939, ch. 927.

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collective bargaining and to conserve the existing agreements. In the event of the public acquisition of privately operated rapid transit facilities, declared the law, the initial application of competitive examinations "would irreparably disorganize the service." Accordingly, it was stated that the city "shall continue to employ all employees of any corporation theretofore owning or operating such transit facility, except officers of the corporation who are deemed unnecessary, who shall have been in the employ of said corporation for one year or more immediately prior to such acquisition and who shall be citizens or shall have filed declarations of intention to become citizens heretofore or within six months after this act takes effect." Their positions upon acquisition were to be in the non-competitive class; they were to be retained in similar or corresponding positions and to have "the seniority theretofore held by them as among themselves." Not later than one year after acquisition, however, the Municipal Civil Service Commission was directed to "determine for what positions or class of positions competitive examinations shall have become feasible" and to "reclassify the various positions with the approval of the state civil service commission." All incumbents, however, were to continue in their positions without further examinations. All new positions created after acquisition and all vacancies were to be filled in accordance with the civil service law. Removals might be made only in accordance with section twenty-two of that law but the operating agency might "dispense with any unnecessary positions", the displaced person going on a civil service preferred eligible list.

Well into the first year after unification the troubled waters were further roiled by uncertainty as to the nature of the declarations of intention to acquire citizenship mentioned in the Wicks Act and by challenges of the constitutionality of the act itself. On the first, the Court of Appeals on March 6, 1941 took a tolerant view of the form required.[24] The attack on the validity of the law as a whole invoked the constitutional

[24] Mazzarella v. Kern, 285 N. Y. 85. The Court remarked that "emphasis on form over matter would defeat the purpose of the act in that the public would be deprived of the services of experienced workmen."

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language already quoted to strike at the wholesale process of covering in. On April 9, 1941, Justice Shientag of the Supreme Court sustained the act.[25]

Recruitment on the rapid transit lines under private management had been conducted for the most part by the unwilled personal methods of accretion which add relatives to relatives and friends to friends. Persons of Irish descent were especially numerous on the operating side; many Italians were engaged on maintenance of way. As in the case of railroads generally, seniority was accented; it could be rationalized, apart from other reasons, as conducive to the experience and steady team play necessary in transportation. As in the case of the country's railroads at large it could be said that the subways were becoming an old men's industry. A union official, on hearing a remark about the career principle in civil service, broke in to say (whether with literal truth or not) that rapid transit men in New York City have on the average been in service seventeen years: that, he exclaimed, is truly a career system. Yet, in the opinion of the staff of the Civil Service Commission, the multiplicity of titles in subway employment under private management suggested that there had not been orderly ladders of advancement at many points.

The fact that so many rapid transit men had grown old eased the transition at the top. Many of the high officers of the private companies were near retirement; their elimination was painless. But the managerial personnel was disturbed very little. Even the position of general superintendent has

[25] Felder v. Fullen, Solo v. Fullen, Bateman v. Fullen, Costello v. Fullen, Hartnett v. Kern, *N. Y. Law Journal*, April 10, 1941, p. 1600. The brief in behalf of the law, stressing the peculiar need for "specialized ability, skill, experience, and knowledge integrated and unified by experience and practice", remarked that "the case is unique in the annals of civil service law . . . for no similar attempt has ever been made by the people to acquire going concerns of such magnitude as the IRT and BMT systems." The Transport Workers' Union did not take part but, in behalf of the law, H. Eliot Kaplan submitted a memorandum for the Association of Office and Supervisory Employees of the BMT Division, the Benevolent Committee of IRT Supervisory and Administrative Employees, the Brotherhood of Locomotive Engineers, the Brotherhood of Railroad Signalmen of America, and the N. Y. C. Transit Employees Benevolent Association, Inc.

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been placed in the competitive classified service although it is admitted that whether it will remain so on Mr. Pfeifer's going will probably depend on the policy of the mayor then in office.

The process of classifying the positions on the newly acquired lines is well advanced. By the end of April 1941, some 16,000 of 25,000 posts had been handled and it was expected that all but the supervisory positions—three to four thousand in number—would be disposed of by July 1. In seeking to arrange lines of promotion, patterns have been available which were worked out in 1940 for the ISS.[26] So, too, experience with examining techniques was gained in handling personnel for the earlier city-run line. A transit bureau has been developed in the Commission's examining division. Headed by Fred Hedin, an engineer, its own personnel reflects primary stress on acquaintance with engineering subject matter, not examining methodology in general. Tests are strongly practical but, with a broadened base and many applicants, written examinations are used to narrow the field followed by the handling of actual equipment under observation.[27] The whole transit system is conceived as an almost closed career system, recruiting from the outside mainly at the bottom. The problem of education prior to entrance remains. So far as operations go, the need for engineering training is not stressed; porters, it is said, should see their way through the ranks of station agents and conductors to posts as motormen and beyond. It is different on the side of power and even in the maintenance of equipment, where initial professional training is more important. Here the examining division underscores the significance of examinations recently conducted for four categories of "maintainer's helper" (electrical, mechanical, power and structural), in the prerequisites for which three years of engi-

[26] Charts which show the sequences of positions in the various branches of the ISS, reaching from the bottom to the post of general superintendent, were reproduced in the New York City Civil Service Commission's *Civil Service Bulletin*, May 1940, vol. 3, no. 5, pp. 202-207.

[27] In a promotion test—conductor to motorman—160 candidates selected by written examination were given individual tryouts on the unused World's Fair spur. On appointment, such men serve in yard service for a year without accident before assignment to trains with passengers.

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neering training in college or in a technical high school were made alternative to experience. Nearly four fifths of some 15,000 applicants (of whom a third passed the written test) were graduates of at least a technical high school.

In general, if civil service techniques are at fault in their application to transit, the error is not an excess of educational stratification. But in order to understand the attitude of union leadership toward civil service it is necessary first to examine the rise and triumph of collective bargaining under private management and then to consider the corollaries attributed to public employment, especially under the conditions of competitive civil service.

IV

It would be beside the point to recount the details of labor's weakness in New York City passenger transport before 1937, when the new Transport Workers' Union won collective agreements on a closed shop basis.[28] The story included a dozen years of union inactivity prior to 1916 and frustrated strikes in that year, in 1920, and in 1926. The use by the rapid transit companies after 1916 of what was the closed shop in reverse—individual "yellow dog" employment contracts in combination with company unions—helps to explain the suspicious militancy of the present labor leadership. In 1928 the "yellow dog" device fell under judicial disapproval.[29] It was not until 1934, however, that important changes came with the NRA and then only on the Interborough. Meanwhile a small independent organization, the Transport Workers' Union, was growing rapidly among the employees of this company. In 1935 it petitioned the regional labor relations office for a referendum; no action was taken. In the following spring the Transport Workers' Union affiliated with the International Association of Machinists but a year later it joined the CIO. The mem-

[28] See Frances Wheeler, "Collective Bargaining on the New York City Transit Lines, 1937", U. S. Bureau of Labor Statistics, *Monthly Labor Review*, March 1938, vol. 46, pp. 686-93.

[29] Interborough Rapid Transit Company v. Lavin *et al.*, 247 N. Y. 159 (1928), and Interborough Rapid Transit Company v. William Green *et al.*, 227 N. Y. S. 258 (1928).

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bership of the TWU in New York City rose to more than forty thousand, its jurisdiction touching all forms of local passenger transport except steam railways and water. Successful in every referendum held under the new state labor relations act of 1937, the Transport Workers' Union reaped its main harvest in the fall of 1937, when eleven agreements were signed with the private rapid transit companies, the major surface lines, and taxicab companies. The closed shop feature of these agreements was upheld against the charge of monopoly in the highest state court.[80] The companies agreed not to retain any employee who was not a member of the union or did not become such within a month after his employment. At the time of unification, the agreements with the IRT and BMT had been successively renewed and extended to run to June 30, 1941.

In the meantime labor relations on the city-operated ISS had afforded clues to attitudes which presaged the later general friction. In 1936 Joseph B. English, then in the car maintenance division of the ISS, wrote to the general superintendent to ask for leave "to represent the interests of the employees of the ISS before the State Legislature". Chairman Delaney replied for the superintendent on April 14: "Your application is denied. The interests of the employees of the ISS will be adequately protected by the Board of Transportation without your interference." [81]

A representation plan was put into effect on the ISS by means of an informal election on January 29, 1937. Paul Kern, president of the Municipal Civil Service Commission, helped to supervise it. It was claimed that 51 of 62 men put up on an all-union slate (covering both the TWU and the Amalgamated Association of Street and Electric Railway Em-

[80] Williams v. Quill, 277 N. Y. 1, 12 N. E. (2nd) 547 (1938).

[81] *Transport Workers' Bulletin*, May 1, 1936, vol. 3, no. 5. By January 1938, this organ was saying in an editorial note: "The TWU will defeat the company union maneuvers of Delaney just as effectively as it tossed overboard the IRT 'Brotherhood', the BMT 'Representative Plan', and the other brands of industrial despotism", vol. 5, no. 1. In March 1938, vol. 5, no. 3, it was saying: "Delaney's chief qualification as head of the Board of Transportation is his hatred of labor, especially when it is organized."

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ployees) were elected to the general grievance committee of 79 members. Consultation, active for a while, tended to dwindle. Whatever the source of failure, at least the Board of Transportation did not seem to strain to give reality to this mode of contact.

On October 21, 1937, the TWU filed a verified petition with the State Labor Relations Board alleging a controversy on the ISS. Claiming that it represented a majority, it "requested the Board to investigate the controversy and certify the union as the sole collective bargaining agency for those employees, pursuant to section 705 of the New York state labor relations act." [32] The Board of Transportation called attention to sec. 715 and declined to appear. The union presented its argument. Section 715, concluding the act, states: "The provisions of this article shall not apply to the employees . . . of the state or of any political or civil subdivision or other agency thereof." The union attorney contended that the exception did not apply to the ISS which was operated as a proprietary rather than governmental activity. The board ruled on January 22, 1938, however, that the language of the exception was unqualified, adding "It is therefore unnecessary for us to determine whether the operation of the subway is a 'proprietary' or a 'governmental' activity." [33] Attempts were made to secure legislation that would bring public bodies within the jurisdiction of the state labor relations act. In February 1938, the New York City council adopted a resolution favoring such action. The sponsor of the resolution was Michael Quill, head of the Transport Workers' Union, who had been elected to the council in the previous fall. But the effort to amend the labor relations act was unsuccessful.

[32] L. 1937, ch. 443.

[33] In Matter of City of New York acting by the Board of Transportation of the City of New York and the TWU, Case No. S. E. 398, Decision No. 56 (mimeographed). White v. Boland, 254 App. Div. 356, 5 N. Y. S. (2nd) 119 (1938), held that the exemption did not exclude men employed in an apartment house managed for purposes of liquidation by the real estate bureau of the department of banking.

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In the spring of 1938 the Transport Workers' Union expressed its general platform for the ISS as follows: "1. Five day week. 2. Twenty-five per cent increase in wages. 3. Twelve work days sick leave with pay. 4. Real seniority. 5. Genuine collective bargaining under the State Labor Relations Board." [34] Later in the year the state convention of delegates of CIO unions pledged "full support to the Transport Workers' Union in its demand that the City of New York presently recognize the rights of its employees on the Independent Subway System to bargain collectively through representatives of the union of their own choosing and that it recognize the same right on the part of the transit employees on such lines as it may hereafter operate." [35]

With unification pending, the union leaders attempted to secure commitments for the acceptance of the existing labor agreements. Mayor La Guardia stated the city's position in a letter on March 2, 1940 to the Transport Workers' Union and the Brotherhood of Locomotive Engineers. "Speaking generally," he wrote, "operation of the unified railroads will necessarily continue without change of employees or methods of management for a considerable time." [36] The important innovations would comprise financial procedures and civil service status. While the right of conference, petition, etc., would be "available to all employees and groups of employees", "no employee's status will depend upon his affiliation with any labor organization."

For the TWU, Michael Quill wrote two days later to the mayor that his proposal was "a union-busting, company-union plan." The union, he complained, had been denied a con-

[34] *Transport Workers' Bulletin*, March 1938.

[35] *Ibid.*, October 1938.

[36] The mayor's letter remarked in conclusion: "The operation of the lines will be strictly a governmental operation. I had made studies in the event that the operation would be through a separate entity or authority. In fact, I have studied the various governmental corporations which operate as such and would have been ready to follow the custom in such cases. It is now certain that ultimately the operation of the unified lines as the present law clearly provides will be direct municipal operation. . . . The right, therefore, to strike against the government is not and cannot be recognized."

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ference on the standing of the agreements after unification. "Unless you are prepared to confer with us immediately," wrote Mr. Quill, "with a view to formulating a plan for labor relations which will give due recognition to the right of employees to bargain collectively through the union of their choice, responsibility for the ensuing consequences will rest upon you and you alone." A little later the mayor was informed that "IRT and BMT employees to the number of 23,000 have, at membership meetings held during the past week, unanimously voted to instruct their General Executive Board to call a strike at such time as it may see fit to preserve the right of collective bargaining." A conference and "adequate guarantees" were again asked.

A conference was held between the union and the Board of Transportation. It was agreed, as to labor contracts in connection with each pending unification plan, that "the Board of Transportation assumes . . . such contracts and all terms and conditions thereof not inconsistent with constitutional or statutory provisions", with the added proviso "that any issue or issues arising under any of the provisions of the contracts shall be subject to judicial decision, and any ruling of the Board construing any of the provisions as being contrary to constitutional or statutory provisions shall be held in abeyance, subject to final judicial decision." The understanding applied to the Brotherhood of Locomotive Engineers and the Brotherhood of Railroad Signalmen as well as the TWU.[87]

Following unification, the issue of enforcing the closed shop arose speedily but inconclusively. In the fall of 1940 the local president of the Transport Workers' Union sent to the management a list of employees on the transferred lines who were no longer members in good standing because of failure to discharge their financial obligations to the TWU. He closed with

[87] After unification, TWU membership on the transferred systems was 12,000 and 8,400 for the IRT and BMT respectively. In addition, on one of the units (the New York Rapid Transit Corporation), 775 members of the Brotherhood of Locomotive Engineers and 120 members of the Brotherhood of Railway Signalmen were parties to closed shop agreements originally concluded in 1937 and subsequently renewed.

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the remark: "Will you kindly give this matter your early attention, and oblige. . . ." [88] The city has cited this communication as a sample and claimed in addition that there have been numerous forms of pressure, including picketing of former union members at the barns and at their homes.

Meanwhile, at the beginning of 1941, the executive board of the Transport Workers' Union indicated that a wage increase of one third would be appropriate. It asked the various union elements to discuss new demands in section meetings. A leaflet, widely distributed to the public in April 1941, under the heading "Our Side of the Transit Story", declared:

> Many transit workers have had their pay cut. The seven-day work week is being brought back. Hundreds of men have been laid off. Our seniority rights are being violated. Promotions guaranteed to us in contracts have been denied. Five to nine per cent is being deducted from our pay for pensions we have nothing to say about.

It is impossible to weigh such contentions or the city's defense outside of a conference in which details might be considered and evidence offered by both sides. The question of wage levels, for example, is complicated by many operations, many types of work, many degrees of seniority, and the interaction of civil service promotion with the inherited seniority practices.[89] Some of the difficulties are those of transition. Thus

[88] Similarly (for the unit with which the Brotherhood of Locomotive Engineers had an agreement) the union officers on July 9, 1940 sent to the superintendent a list of men four months in arrears on dues with the request that, "as this is a violation of article No. 17 in our present agreement . . . you suspend these four men for the two weeks period, and if by that time they do not comply with the above article, they are to be dismissed from service." In September 1940, the Brotherhood of Railroad Signalmen, calling attention to the fact that its agreement required towermen and signalmen on the unit in question to be members in good standing, wrote: "please be advised that the following listed men have been dropped as members." The city's complaint in 1941 (*infra*, p. 188) stated that the two brotherhoods, unlike the Transport Workers' Union, had "uttered no threats" and "committed no acts of violence in an effort to compel compliance" with the agreements.

[89] Certain wage adjustments were announced by the Board of Transportation late in April 1941, having as a primary purpose equalization of pay among the three divisions. Some preparatory conversations on this problem had been held

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the pension system of the City of New York, to which the transit men now contribute, is perhaps the most generous in the country, including right of withdrawal at any time on leaving city employment, borrowing privileges, and the like. But the men remember a company pension scheme so drawn that in the union victories of 1937 the company was required not only to cease collecting employee contributions but also to refund to the men individually many millions already paid in. Whatever the employee's ultimate advantage, moreover, heavy compulsory pension contributions reduce his current purchasing power.

Tension in the spring of 1941 was tightened by a strike on the private bus lines at the expiration of the collective agreements applicable to them. Some city officials confessed surprise; they had expected that, if any strike occurred, it would come after June 30 with the stoppage of every passenger transport facility. Union spokesmen implied that the fault for the original refusal of the bus companies to arrange terms lay with the city, which may have wished to bring the union into the open as an aggressor and to discredit it. Certainly, after an orderly strike of eleven days, the mayor's board of special representatives had little difficulty in arranging for the arbitration of the union's demand for increased pay while the companies dropped their counterdemands. It was in the flush of this indeterminate victory that Michael Quill was quoted as saying: ". . . strike is the only thing they understand at the City Hall from the Mayor down to the cat." [40]

The temper of the hour was shown in the hasty passage of

with a committee of the Transport Workers' Union in the summer of 1940. Of pay generally on the rapid transit lines it may be said that the situation was helped by the fact that the long service of many of the men brought them to the top of the brackets for their positions.

[40] *New York Times*, March 22, 1941. Mr. Quill was also quoted as saying: "When June 30th rolls around we will take another trip to the City Hall, in the hope that it will find the Mayor in a better mood than he has been in the last few weeks." No textual report of this speech was found in the *New York Weekly Transport Bulletin*.

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the Wicks Act of 1941, in itself minor legislation.[41] In this atmosphere of strain the issue of the enforcement of the old labor agreements merged into the question of making new ones. On March 29 and 30 the international executive board of the Transport Workers' Union framed a "declaration of policy in respect to labor relations on N.Y.C. transit system." In conducting a business enterprise, read the declaration, "it behooves the City of New York to accord to its transit employees the same rights that any railroad corporation is required by law to extend to its employees." The Board of Transportation was charged with "flagrantly bad faith". At this time a special defense fund of $100,000 was made available. The union began an unusual campaign of public appeal, including the distribution of a series of leaflets at all subway exits.

The mayor countered by a letter to the Board of Transportation on April 7, in which he transmitted the "declaration of policy". In his comment thereon he repeated the stand taken in March 1940. "The rapid transit system", he wrote, "is just as much a Department of the City as the Department of Water Supply, Police Department, Fire Department, the schools or any other branch of the City Government." The mayor continued: "The City does not and cannot recognize the right of any group to strike against the City." Any employee "improperly leaving his employment without authority

[41] S. Int. 2060, Pr. No. 2670, L. 1941, ch. 300, amended sec. 1991 of the penal law to extend existing provisions against sabotage on railroads to street railroads and bus systems, whether publicly or privately operated, adding a prohibition against leaving "unattended any car, bus or other transit facility or equipment given into his possession or care as an officer, employee or agent. . . ." The impression that attended its hurried passage was reflected in the inaccurate front-page headline of the reputable *New York Times*, April 3, 1941: "Bill barring subway strike here voted in Albany; sent to Lehman." A full-dress and intense hearing was held before the Governor on April 14. The vagueness of the language left much to the restraint of courts. In signing it the Governor said: "This bill does not in any way prohibit or limit the right to strike lawfully. . . . If the bill did that I would disapprove it." A broadside of the TWU (claiming a "complete victory" on this point) declared: "Armed with this statement of the Governor, the transit workers of New York remain free to enjoy and exercise the rights possessed by all American workers." But the city had not withdrawn its reservations on the scope of the word "lawfully".

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is subject to charges and may be dismissed from the service, thereby losing not only his position and his seniority but also his pension rights. . . ." Referring to the departments of the city as "closed Civil Service shops", the mayor asserted that "separate agreements covering employment of Civil Service employees cannot be made with any group of employees"; that any employee or group had the right of appearance before the Board of Transportation; and that "no employee of the City . . . can be discharged for non-payment of dues to any organization." He asked the board to raise the question for judicial decision.

The Board of Transportation accordingly resolved on April 9, 1941 that "this Board is of the opinion that neither it nor the City of New York can lawfully dismiss any of its employees because they do not pay union dues, and therefore rejects the demands that such employees be dismissed." The Corporation Counsel was requested "to bring an action for a declaratory judgment to determine the rights, obligations and powers of the City of New York and the Board of Transportation with respect to said labor agreements", the ruling of the board to be held in abeyance pending the final decision. At the same time, in a letter to all employees of the system, the board set forth the mayor's letter and its resolution, saying that although it had received large numbers of letters from employees as to their obligation to belong to a labor organization, it had not answered any, believing "that almost everybody would soon understand that the Civil Service Law protects all civil service employees in their right to permanent employment as long as they faithfully perform the duties of their positions." It added that "recent attempts to intimidate employees by threats, picketing of homes and other means of coercion to compel them to pay union dues have, in the opinion of the Board, made it necessary to take decisive action to protect the rights of employees."

On April 9, the Corporation Counsel for the City of New York and the Board of Transportation filed in the Supreme Court of the state a summons and complaint against the unions

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involved.[42] A sequence of events was set forth to show that "there exists a controversy" between the plaintiffs and the unions "as to their jural relations and obligations in the premises"; that "if this controversy be not resolved by this Court, the health, safety and welfare of a substantial portion of the population of The City of New York will be placed in jeopardy, and serious and irreparable damage and great financial loss wil be caused to the plaintiffs and to the people of the City of New York." As to each labor agreement taken over from private operation, the city contended that it is "without power under the Constitution and laws of the State of New York to perform and carry out the provisions . . . or to extend or renew such agreement."

V

The issues raised by the New York City transit situation strike deeply into the problem of the management of public enterprise, but, beyond that, they touch the question of the existence of an autonomous labor movement in a society wherein the range of public enterprise is already considerable and likely to increase.

In their legal arguments, the city and the union disagree in their view of the familiar distinction between "governmental" and "proprietary" activities of municipal corpora-

[42] The City of New York, and John H. Delaney, Frank X. Sullivan and George Keegan, constituting the Board of Transportation of the City of New York, Plaintiffs, against Transport Workers' Union of America . . . and Michael Quill, as President of said Union; Transport Workers' Union of Greater New York, Local 100 . . . and Austin Hogan, as President of said Union; Brotherhood of Locomotive Engineers . . . General Committee of Adjustment; Brotherhood of Railroad Signalmen of America . . . Committee representing towermen . . . and . . . Committee representing signalmen. The complaint was a printed document of 369 pages, including texts of the various labor agreements on the rapid transit lines as renewed and extended. The answer was to be filed within twenty days but various reasons, including the illness of union counsel, Harry Sacher, led to extensions. It was not certain that judicial action could be taken before June 30 nor was it likely that the issue of law would go no further than the state Supreme Court. The National Civil Service Reform League has asked for permission to intervene through its law committee "so as to protect the open competitive merit system from becoming inoperative."

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tions. The union invokes, among others, a case in which the highest court of New York State in 1909 said (not with reference to the conditions of operation): ". . . the subway is a business enterprise of the city, through which money may be made or lost, the same as if it were owned by an ordinary railroad corporation. It was built by and belongs to the city as a proprietor, not as a sovereign." [43]

In a letter to the mayor on April 10, 1941, President Philip A. Murray of the CIO wrote:

> It seems to me that in denying employees on the city-owned transit lines the right to collective bargaining, you have lost sight of factors which should have led you to a different conclusion. The operation of transit lines is not like the maintenance of the Police or Fire Departments. The latter constitutes the performance of a governmental function. The operation of a transit line is a business enterprise. It is a commercial venture in which money may be made or lost. It renders a service for which each patron pays as he rides. No other municipal service is comparable to the transit service.

On the other side, the city is partly realistic when it belittles the distinction between "governmental" and "proprietary" in terms of the reasons on which in the past it was often purportedly based.[44] It is unreal, for example, to attribute private as opposed to public benefit to the governmental operation of an electrical utility, although there may be important group differences between the public as taxpayer and as purchaser

[43] Matter of Rapid Transit Railroad Commissioners, 197 N. Y. 81. For later expression of the doctrine in the New York courts, see Village of Boonville v. Maltbie, 281 N. Y. S. 787, 156 Misc. 6 (1935), dealing with an electricity plant.

[44] Ironically, the distinction was invoked a year ago in behalf of the Board of Transportation in Turel v. Delaney, *supra*, p. 174, where the Board was vainly contending that it might in its discretion contract for medical service. In the argument on March 14, 1940 it was said: "In running a rapid transit railroad the Board of Transportation is engaged in a proprietary, not a governmental function . . . the legislature of this state has gone out of its way to confer the broadest contractual powers upon the Board of Transportation in aid of this particular proprietary function." The decision did not deal with this argument.

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of electricity. The sounder grounds for giving a distinctive position to the commercial activities of government are broadly administrative, turning on the needs that arise when the state enters the market place to supply a commodity or a service for a price.

It must be admitted that, just as it is unreal to bundle all types of governmental activity in the same category, it would be oversimplification to prescribe for public enterprise as if its manifestations and requirements were all alike. Thus an affair like the rapid transit network—now nearly as indispensable as the streets themselves, subsidized to make possible a five cent fare, to which the whole life of the metropolis is geared and on which its tempo completely depends—may differ importantly from an industry conducted by government on a shifting price in an ever changing market.

Rigidity of statement on this matter, such as now appears in New York City's arguments, is disturbing when considered in the face of the possible, even probable, extension of government's economic functions. An extreme application of civil service, with drastic emphasis upon the idea of status, might reduce large areas of the labor movement to a shadow. To say that perfected public administration can be relied upon to consider the interests of all classes is well taken in part but may slight two considerations. First, whatever the ownership, there are inherent problems in the relation of management and men that can hardly be satisfactorily adjusted in an atmosphere of undisputed authority. Second, if totalitarian types of social structure are to be avoided, a truly autonomous labor movement is an element to be conserved even at the cost of much inconvenience.

In the handling of labor supply for public enterprise, there are several alternatives variously illustrated throughout the world.[45] One type of solution seeks to put public enterprise on the same basis as private as to labor relations. In the past, management has tended to favor this on grounds of efficiency

[45] The author acknowledges assistance from the Council for Research in the Social Sciences of Columbia University in studies that contribute to the background of this article.

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and economy, for at the higher levels it has permitted the payment of salaries above those normal in the civil service and for the mass it has made it easier to cut the labor force in a falling market. As standards for the protection of labor generally improve, both by legislation and by union action, the latter advantage may become less marked; indeed, it will be more ironic than paradoxical if labor ends by opposing civil service status in the name of security. In any case, when humanely applied, this method of handling labor is usually associated with some general machinery for the collective negotiation of labor standards for both the public and private elements in the field of industry in question, as illustrated in the joint councils concerned with labor in the municipal trading undertakings of British cities.[46] A second possibility amounts to civil service administered internally by the individual public enterprise. The Tennessee Valley Authority has been roughly of this type.[47] A third possibility, illustrated in the conduct of rapid transit in New York City, brings the whole personnel of the enterprise under the general civil service law and its administration. But does civil service have standard and undeviating implications?

[46] Herman Finer states: ". . . with the exception of passenger transport, standard wages and conditions are determined in common with those of the company-owned undertakings by National Joint Industrial Councils." *Municipal Trading* (London, 1941), p. 217. For example, in the local passenger transport field, a National Joint Council for the Tramway Industry of 44 once existed, half from management and half from the employees, with 14 municipal and 8 private-company employer representatives. Since 1937 there has been a Joint Industrial Council confined to municipal undertakings and covering all forms of transport. For criticism of the freedom of action of management (moved by its statutory responsibility to security holders) under the London Passenger Transport Act of 1933, see Ernest Davies, "The London Bus Strike and the Public Corporation", *Political Quarterly*, vol. 8 (1937), pp. 379-402.

[47] The congressional joint committee that investigated the Authority disagreed with the recommendation of Leonard D. White, its expert consultant on personnel, that, with certain exceptions in the higher personnel, the employees of such a public corporation should be subject to the general merit system administered by the Civil Service Commission. 76th Congress, First Session, Senate Document No. 56, *Report of the Joint Committee on the Investigation of the Tennessee Valley Authority* (April 3, 1939), p. 61. For a general statement of Dr. White's views, see his *Introduction to the Study of Public Administration* (New York, rev. ed. 1939), pp. 133-34.

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It can be argued, of course, that the merit system embodies ideals toward which all employment in modern society is straining. It seeks to guard against favoritism and arbitrary action; it is impregnated with the idea voiced in another connection by Gerard Swope, president at the time of the General Electric Company, when he said: "I believe, quite basically, that contented men, without fear in their minds, will do better work than those who are discontented and have fear constantly hanging over them." [48] But to argue thus assumes civil service with all of its modern and positive attributes, observed by operating agencies as well as by civil service commissions, and including a growing concern for the conditions of morale in the mass and attention to more than the discovery and recognition of individual excellence.

Moreover, unless care is taken in seeking to decentralize the handling of numerous and changing matters peculiar to different types of governmental activity, the unintentional effect of the administration of personnel under civil service commissions of general jurisdiction may be to crowd the statute books with details and to chase public employees into politics. The outcome is especially injurious to public enterprise.

In the New York transit controversy the circumstances of leadership on both sides have aggravated the problem of adjustment. Michael Quill was in the Irish Republican Army before he came to the United States in 1926 and secured work as a station agent; the iron is in him. The record of the TWU leadership is one of determination, galvanized for some by a revolutionary philosophy; but it has not been a record of intransigence. The leadership has recognized limits, pushing until it reached them; it has known where to stop; and it has stood by the agreements it has signed. But perhaps it has not been alert to the need for a reorientation of its thinking and methods in terms of public operation. The Board of Transportation, for its part, has neither a modern labor policy nor means for its administration. Its personnel clerk is a

[48] U. S. Congress, Senate Committee on Manufactures, 72nd Congress, First Session, *Hearings before a Subcommittee on the Establishment of a National Economic Council*, October 28, 1931, p. 300.

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veteran from the Civil Service Commission, competent in his sphere but limited in his opportunities. With a vivid sense of virtue, the board puts individual disciplinary cases on its calendar for hearing and goes further than the law requires; as a board, for example, it talks with a man up for repeated drunkenness and gives him another chance if he will take a pledge with his priest. This individual benevolence may be human salvage; certainly it is symptomatic of the managerial habits of the board; but it is hardly the sign of modernized personnel relations in a large organization.

When New York City was becoming involved in rapid transit operation, no hostility to civil service was evident on the part of the men; on the contrary, the security and other conditions associated with it were welcomed. Formal examinations were feared, it is true; this anxiety was largely removed by the blanket covering in under the Wicks Act, although promotional tests are still an unwonted phenomenon. The anxiety of non-citizen employees, another cause of restlessness in the face of civil service, has been partly allayed by the liberal view of the courts. It has been the implications of civil service for collective bargaining that chiefly affect the views of the leaders. This attitude merges into a triple criticism of civil service. First, however good in itself, it safeguards only the processes of recruitment and promotion and to some extent dismissal. It does not affect the major conditions of employment, which have to do with wages, hours, working conditions, and countless variations necessary in their adjustment in a large organization. So much is evident. Second, say union men, civil service status is no protection against being dropped, for positions may be abolished. Third, complaint is heard that it interferes with the seniority so precious in the tradition of railroading. But the crux is the fact that civil service is represented as an obstacle to collective labor agreements.

In the statements of the city, there has been no denial of the right and propriety of group action, including access to management for the expression of views. The right to belong to unions affiliated with the outside labor movement has not been

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questioned.[49] "Any group of employees is free to present views and recommendations to the proper officials, in this case the Board of Transportation, concerning working conditions, salaries and other matters pertaining to employment," wrote the mayor on April 7, 1941. He stated further: "Every employee is free to pay dues to any lawful organization if he so desires. No department will coerce anyone . . . not to become a member of any lawful organization." After listing a number of groups, some confined to city employment and some general like the Transport Workers' Union, the mayor declared that "any other bona fide organization of employees may appear before the Board by representation on behalf of their members."

But the city truly pushes its defenses far in seeming to hold that contracts on labor conditions cannot be entered into by public bodies. If maintained, this view would seem to block all collective agreements on matters like wages and working conditions and for reasons quite apart from issues such as the closed shop. The contention is that it would be an unauthorized surrender of the powers of government. On this it must be said that, even if government is conceived strictly as a sovereign, not as an enterpriser, a sovereign could hardly accomplish his purposes in the modern world without entering into contracts. Agreements affecting employment can be limited to the fiscal period. In the case of the Board of Transportation there seems no lack of power to arrange matters of employment. In a case which dealt with the question of the authority of the board, *vis à vis* the city, to fix the wages of its employees, the court noted that the general scheme of the laws

[49] In a number of municipalities officials have taken the attitude that affiliation with the A. F. of L. carried the obligation to participate in general strikes and have passed ordinances against such affiliation. About 1920 some fifty locals of the International Association of Firefighters gave up their A. F. of L. charters in view of departmental disapproval. David Ziskind, *One Thousand Strikes of Government Employees* (New York, 1940), p. 241. On this point, see also Sterling D. Spero, *The Labor Movement in a Government Industry* (New York, 1927), and his later monograph, "Employer and Employee in the Public Service", in *Problems of the American Public Service*, prepared for the Commission of Inquiry on Public Service Personnel (New York and London, 1935).

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bearing on the board "would be subverted if the Board of Transportation did not have authority to fix the salaries to be paid as well as to regulate the duties, hours of service, etc., of the employees of the system." [50]

It hardly follows as a matter of legal necessity that the board cannot handle some of these matters by agreement. The criterion is efficiency from all standpoints. Certainly, practice in these matters is marked by relative stability, not day-to-day changes. Nor are instances lacking of labor agreements entered into by governmental bodies, especially of a semi-industrial nature.[51]

The legal obstacle just noted, if it is real at all, seems wider than civil service employment. In the transit controversy, however, it is reinforced by a strained conception of civil service as a status exhaustively defined by its own rules and regulations. This idea seemed to be reflected in the mayor's statement on April 7, 1941 but was less broadly put in a letter to Philip Murray on May 20, which seemed to center the issue of legal inability in the closed shop.

A cognate issue is the recognition of a union as sole bargaining representative. In many jurisdictions that possibility is established by law for private industry now and may be enforced by government-supervised elections. Apart from its aid to the leverage of labor, a single channel might have advantages from the standpoint of administrative convenience. But such an arrangement is declared to be incompatible with the public service, not only under present law, but even inherently. Nevertheless, it is hard to see why, in their discretion, legislatures might not adopt the policy for public bodies, especially if agreements were supposed to be allowed to result

[50] Matter of Colbert v. Delaney, 249 App. Div. 209, 215 (1936).

[51] Detroit's street railways were municipalized partly because of chronic labor tie-ups; there has been no general stoppage since. Wage rates, etc., have been arranged by year-to-year agreements with the Amalgamated, under conditions approximating the closed shop. The enabling act provided: "Within a reasonable time after the acquisition of a public transportation utility the officials in charge of the operation shall establish a system of civil service for the selection and retention of its employees." Michigan Compiled Laws, 1929, ch. 49, sec. 2236. On this general point, see Ziskind, *op. cit.*, p. 198.

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from negotiations. Nor would the arrangement need to be literally inclusive, for in any organization there are diverse units and types of operations and employment.

A compromise solution of the dilemma of reconciling concert and free organization for negotiations in public service would be a composite labor representation committee chosen proportionally in an election under neutral auspices. The seeming breakdown of this scheme on the Independent Subway System after 1937 [52] is hardly proof that it is unworkable even in a tense environment. Negotiation with the majority, moreover, could be conducted without such a committee.

A closed shop, to be enforced by the automatic discharge of men who were not members in good standing of one union, is the natural extension but not the logically inevitable corollary of the principle of an exclusive bargaining agent. In the transit controversy the union spokesmen have sometimes erred in arguing that civil service regulates only appointments and promotions, not removals; for the civil service law, though not the constitution, states grounds for the latter. Conceivably the legislature could adopt the policy of the closed shop if, in the light of general industrial experience, it seemed desirable to admit it in public service, especially in massive commercial enterprises. The tradition of security in the civil service, no doubt exaggerated, does hold for unions the risk of an indifference on the part of members which may be poles apart in mood from self-dedication to the welfare of the enterprise as a whole. But in such circumstances the pressing need of the union is the prestige of effective managerial contacts, not monopoly.

The right to strike has been both in the background and in the foreground of the transit controversy. For the union, it remains in the background; the union's formal statements have stressed conference and agreement, not the strike. For the city, the strike has been put in the foreground; statements such as the mayor's letters in the spring of 1940 and 1941 have expressly denied the right to strike against the city under any

[52] *Supra*, p. 180.

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circumstances; and the complaint in the pending court action refers to a "strike such as has been threatened." The union calls the mayor's allusions to a strike "demagogic". The heart of the union's case is a paradox. Strikes have been and will be avoided by effective collective bargaining, made possible in turn by union recognition, which depends upon the bare possibility of strikes although these are avoided by the very process that the possibility engenders.

Direct prohibitions of strikes in public employment do not seem to exist in the United States, although statutes of a different sort, such as one aimed at conspiracy to obstruct the mails, have occasionally been brought to bear. "The courts", it is reported, "have never passed directly upon the right of government employees to strike." [53] But whether real or supposed, the assumption of illegality, if widely held, is likely to be a potent factor in the public's attitude. Unions of civil servants have not stressed the right to strike; [54] many expressly renounce it in their constitutions. Strikes in public service have occurred.[55] Prohibitions could not prevent strikes, granted the willingness of determined men to risk the consequences. Still less could thundered commands avoid the

[53] Ziskind, *op. cit.*, p. 233.

[54] The Rules and Regulations of the United Federal Workers of America, affiliated with the CIO, state: "While the United Federal Workers of America recognize that striking and picketing may be used legitimately to secure the objectives of organized labor generally, it realizes that these methods are not applicable nor desirable for government workers and therefore it does not use them."

[55] Dr. Ziskind, whose net had a wide mouth and a fine mesh, compiled an account of 1,116 strikes of government employees, his instances going back to 1835. Of the total, 664 were on public employment programs since 1935. Of the 114 in publicly owned utilities, 46 were against the U. S. Railroad Administration. Three involved street-car systems. In the San Francisco general strike of 1937, the employees of the municipal line went out but speedily restored the partial service at the instance of the Strike Strategy Committee, which on the following day requested all municipal men to return to work. Two minor and temporary stoppages in 1937 are listed for the Detroit street railways. (*Op. cit.*, p. 118.) In New York City the organ of the TWU has declared that the Board of Transportation "has recognized strikes in the 148th Street shop, the Livonia and 240th Street inspection barns, and elsewhere". *Transport Bulletin*, November 23, 1940.

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withdrawal of zeal while men's bodies remained at their posts. The state, of course, must have assured means for maintaining its existence and the elementary conditions of safety and order. Its safeguard in these matters is a military arm unquestionably loyal to duly constituted political authority. The conditions in the civilian services point, not to stern negations, but to positive preventives. It is perhaps significant in the New York City transit field that union literature in recent years has sometimes seemed to find a model in the theory and methods of labor adjustment now in existence for the railroads of the country.

For activities that are peculiarly indispensable, where the injury to the beneficiaries of the service is immediate, inescapable and profound, a condition tends to arise in which the right to strike is neither denied nor utilized. The situation involves elements of balance that elude formal statement. The condition seems unworkable to those who insist on logically tight systems. Yet free institutions rest in part on just this sort of equilibrium; the ability to make it workable was never more important than now.

ARTHUR W. MACMAHON

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POLICIES OF NATIONAL MANUFACTURING
SPITZENVERBÄNDE * I

I. Economic Policies—Monopoly, Protection, Privilege

THE leading economic resultant of the evolution of centralized policy-forming power in business might simply be termed: promotion of monopoly.[1] Interpreted broadly, such an identification would be consistent with the records, yet it also greatly oversimplifies the picture. For present purposes, the better to show the changed sources, nature and interconnections among the principal carriers of monopoly powers, analysis may be broken down to deal with the collusive practices of (1) the industrial, commercial and financial giants in the corporate world; (2) cartels, rings, pools, syndicates and trade associations which may have taken on one or more of the several cartel functions; and (3) trade associations,

* *Spitzenverbände* are "peak associations" or central federations of trade associations, chambers of commerce, and other groups organized for the specific purpose of coördinating national business policies along manufacturing, trading, financial, transportation or other lines. They are to be found in every major capitalistic country in the world, most of them dating from the World War and post-war periods. Examples in the field of manufacturing are: United States, the National Association of Manufacturers; England, The Federation of British Industries; France, the *Confédération Générale du Patronat Francais;* Germany, the *Reichsverband der Deutschen Industrie* and its successor (after the Nazi coup) the *Reichsgruppe Industrie.* This is the first installment of a study based on materials made available through a generous research grant from the Carnegie Corporation.

[1] The term "monopoly" is used here in its more general sense to indicate (a) variants which range from seller control by one firm (mono-poly), through two firm (duo-poly), to several but a limited number of concerns (olio-poly), and to include (b) all the states resulting from all these retreats from pure competition, regardless of origin, provided they serve clearly to enhance the relative power of small inside (private) groups effectively to control one or more strategic elements of price, production, and marketing policies for a single product, a group of products, or all those of an entire industry.

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cartels, and similar federations of business interests when grouped or banded together into confederational, central, or "peak" associations (*Spitzenverbände*).

Most analyses of monopoly trends deal primarily or exclusively with the first of these three. The more theoretical treatments are concerned with problems in the mechanics of price manipulation in circumstances showing some determinate departure from perfectly or purely competitive norms.[2] Other writers confine themselves to "trust", combination and "conspiracy policies" of the corporate giants as they "affect the public interest", or as they constitute objects of legislative and regulatory control by the government. The former consider monopoly problems solely within the economic frame of reference; the latter typically ignore both the economic and political frames of reference.

In the present connection, we wish to present a third—and partially overlapping—set of issues relating to the monopolistic policies of organized business in which political and economic

[2] The Federal Trade Commission, in its "Report to the Temporary National Economic Committee on Monopolistic Practices in Industries" (*TNEC Hearings*, 1939, Part 5-A, p. 2305), summarized under this head all cases centered in "acts and practices [which] are . . . calculated and tend to interfere with the *natural play* of *normal competitive forces*, with a resultant increased concentration of private economic power in the hands of private and limited groups, and in the imposition of *unnatural limitations and restrictions* on trade with consequent injury to the public." I have underlined the obvious jokers, but more questionable still is the identification: decline of competition = corresponding rise of monopoly powers. Strictly speaking, of course, "imperfect competition" and the exercise of monopoly powers through "monopolistic competition" cannot be used as though the terms are interchangeable, as implied in the above FTC statement. (See J. M. Clark, "Towards a Concept of Workable Competition", *American Economic Review*, June 1940, especially pp. 244-245.) But it is only in an abstract, classificatory sense of the terms that competition and monopoly can be kept antiseptic to each other (Joan Robinson, *The Economics of Imperfect Competition* [London, 1933], introduction) under the best of circumstances—perhaps not even then—and in general it is true that historically the decline of competition is practically coterminous and coextensive with the advance of some one or more collusive controls. These controls, to be sure, may actually heighten the level and sharpen the edge of competition; but the new competition is cumulatively of a different type. It complies with different procedural rules and pursues greatly altered ends, as compared with the old type, the cogent and witty Mrs. Robinson to the contrary notwithstanding.

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facets are inextricably interwoven; to wit, what are the long-run changes in the structure, functioning and "balance-of-power" relationships within and among the great combinations which at once narrow and concentrate leadership within their own corporate frontiers, while enhancing their power to shape the larger destinies of the looser forms of business organization which are subsumed under the other two headings above? How far and how generally, one may ask, are the "trusts" enabled to pose the issues for these other federations of business interests, and what is the nature of the issues they pose? In what manner and by what means are they enabled to implement policies advocated for the trade, the industry and the economic system as a whole? And in what respects do the nature of the policies advocated on the one hand, and the means for partial or full instrumentation outside of their own corporate frontiers on the other, become altered as interests broaden to the wider horizons?

It will not be possible, within the limited confines of the following pages, to offer more than a rough classification of the suggested reasons why there has taken place such a relative increase in the manipulative powers of big business. Nor is there need in the present connection for much more, since principal interest centers in the bearing such power has on the policies of the looser types of business organization, now growing with such amazing speed throughout the capitalistic world.

A like interest dominates present attention to the activities of what might be termed transitional forms of collusion commonly known as cartels, rings, pools, syndicates, etc. Some writers, notably Germans following in the path blazed by Robert Liefmann, have devoted a great deal of attention to the monopoly features or results of these contractual or semi-contractual devices for exercising controls similar to those long employed by several of the corporate giants. This latter interest is growing rapidly, particularly in America under stimulus of a vigorous revival of anti-trust prosecutions inaugurated by Robert Jackson and Thurman Arnold.

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Our attention, however, must here be focused primarily on the confederations and *Spitzenverbände;* for centralized business policies are directed by the corporate giants, which supply the *Spitzenverbände* with their effective leadership, in such ways as increasingly to bear upon those fundamental sanctions in which are enmeshed the institutional gears for the capitalistic system as a whole, and those monopoly-oriented pressures applied by the combines and cartels increasingly take on meaning as they are analyzed in this context, and lose significance—if they do not, in fact, become at times wholly inexplicable—when taken separately and in isolation therefrom. "People of the same trade seldom meet together, even for merriment and diversion," observed the wily Adam Smith, "but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices." As true as when first uttered, but what happens to the quality and the objectives of such conspiracies when they are not only actively encouraged by the trend of leading opinion throughout both business and governmental circles, but also when they are centrally directed by huge combines which Smith would have assumed, out of hand, to be monsters of willful, capricious and dangerous power?

In other words, not the absolute number, nor the underlying structures, nor even the rates of growth, in these several nuclei of collusive practices, stand at the center of the picture, but rather the problem of how far these are being consciously arranged by experienced and compactly organized groups into patterns designed to promote the continued functioning of this cumulatively anticompetitive type of business system. It is not true, to repeat familiar warning, that there are no important counter or cross currents which militate against the spread and permeation of collusive practices, but we shall be dealing in the following pages with the dominant, not the recessive, characteristics, with those which are convergent, mutually reënforcing and additive, not with those which cancel each other out or which are absorbed in rear-guard action.

Not that the pattern is uniform in all respects from one industry, or industrial area, or country, to another. Even the scattered and unsatisfactory data, now available to the inter-

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ested reader, should quickly put that question to rest. But just as the biologist, examining the infinite variations in the members of the species, recognizes that the species, *sui generis,* still exists with wholly distinctive structural and pathological characteristics which are binding upon and determinate for the life cycles of every single member, so here one finds a basic sameness in purpose, a general uniformity of direction-impulse, an archetypal pattern of actual or projected controls which underlie the central realities of swiftly unfolding economic power in every major and minor country organized on a capitalistic footing.

With attention focused, then, on policies of these centralized associations or *Spitzenverbände,* what may be considered the more significant changes underlying the policy shifts of combines and cartels which bear directly upon the nature of the programs of the leading confederational groupings? Let us consider them seriatim.

1. *Changes Underlying Policy-Formulation of the Corporate Giants*

In the first place, the more recent histories of every major capitalistic country show that there is no tendency for the combination movement as such to disappear, or perhaps even to slow down. Careful, or even casual, examination of the data from the famous Pujo Investigation down through the numerous chronicles of great American fortunes, of the records of the merger and combination movement during the World War and after, of the material published by Attorney General Robert Jackson when Commissioner of the Bureau of Internal Revenue, or of the data submitted by Willard Thorp of Dun and Bradstreet before the opening meetings of the Temporary National Economic Committee and of the Anti-Trust Division of the Department of Justice thereafter, permits no doubt on this score. A similar story comes out of the investigations of the Balfour Committee, and the studies of Levy, Lucas and others for England. For pre-Nazi Germany, the data appear

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in the voluminous reports of the *Enquete Ausschuss*,[3] and for post-Nazi Germany in the extraordinarily compact but exhaustive summary of Dr. Günter Keiser.[4] Carl Schmidt has recently summarized the record of concentration in Fascist Italy, confirming thereby statements repeatedly made in the official Italian literature.[5] The same picture holds for France, and in an even more pronounced fashion for Japan, as set forth in official publications.

These records of concentration do not prove increased social concentration of either wealth or income. Such may very well be taking place, but the evidence relates primarily to three phenomena: (a) growth in the relative importance of the corporate form of organization; (b) increase in the relative size of the larger concerns; and (c) a continuation of the process of absorption of, or morganatic alliance with, smaller and competing enterprises through merger, branch and affiliate status, minority shareholdings, etc.

In the second place, there is to be found within all these countries the process termed by Berle and Means as the "splitting of the property atom". Ownership is cumulatively being separated from management and control, just as previously the laborer was separated from ownership. But the matter does

[3] As shown particularly in the reports dealing with the coal, iron and steel, heavy chemicals, and machine industries. See also various issues of *Die Wirtschaftskurve* throughout the 1920-1930 decade.

[4] Günter Keiser, "Der jüngste Konzentrationsprozess", *Die Wirtschaftskurve*, Heft II, 1939, pp. 136-156 and 214-234. Dr. Keiser thinks there may be some tendency in the future for combination to slow down, though such a forecast cannot be read directly from the record to date.

[5] Carl T. Schmidt, "Joint-Stock Enterprises in Italy", *American Economic Review*, March 1940; also the various annual reports of the Confederation of Fascist Industrialists. At the 1928 meeting of the National Association of Manufacturers, Miss Elizabeth Humes, Assistant Trade Commissioner in Rome of the United States Department of Commerce, reported: "Following in the footsteps of Germany, Mussolini's government is encouraging industrial amalgamations. To this end, taxation on industrial mergers has been abolished. The outstanding industries of the country, including the automobile, the rayon, the cotton, the chemical, the iron and steel industries are all in process of absorbing the smaller concerns and concentrating the buying, manufacturing and distributing branches in the hands of a few powerful corporations." *Proceedings of the Thirty-Fourth Annual Meeting*, pp. 381-384.

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not come to rest there, for while the owners of corporate securities are steadily drifting into the status of a rentier class [6]—formally in the totalitarian countries [7] and de facto in the liberal-capitalistic—the changed status is no longer traceable entirely either to reduction of equity rights through stock and debenture reclassifications or to mere blocked holdings strategically placed at the head of a control pyramid, such as the holding company. In the huge corporate complexes of all major capitalistic countries there are growing up inner blocs

[6] A number of writers (e.g., Joan Robinson, *Essays in the Theory of Employment* [New York, 1937]) habitually refer to holders of corporate securities as a "rentier class". In testimony given by representatives of the big corporations of the German heavy industries before the *Enquete Ausschuss* (*Enquete Ausschuss zur Untersuchung der Erzeugungs- und Absatzbedingen der deutschen Wirtschaft*), bitter complaint against the demands of stockholders for higher and higher dividends was frequently followed by proposals for fixing maximum and minimum dividend disbursements (commonly called "stabilization of dividends") which could be required of management in exchange for non-interference by management in the flow when earned. Numerous American companies have advocated, and a few have experimented with, schemes of this sort. Of perhaps even greater significance is the growing importance in the investment markets of insurance companies, investment trusts, estates handled in trust, university and other special endowments for research, charitable, or other purposes (hospitals, clinics, etc.)—all of which have a much greater interest in regularity and reliability of return, than in the making of speculative gains. The pressures they exert, the influences they represent, and the policies they favor all restrict interest in management to safe, regular, conservative return. We have here a certain institutionalization of the rentier-ownership status and its appropriate mentality which, operating directly within the inner circles of private ownership, promises to become the rule and not the exception. In Japan a similar effect is achieved by the common practice of the general investing public of putting money in savings accounts, and not in industrial securities. The banks then invest the funds in industrial or commercial enterprises affiliated, more often than not, directly with them. Much the same appears to be the case in Italy. Thus the suggestion made by J. M. Keynes, *The General Theory of Employment, Interest and Money* (New York, 1936), p. 221, that the rentier class will disappear as interest rates decline to zero, is bound to run into cumulatively more determined opposition. As with Richard Jones's famous reply to Ricardo's theory of no rent land, given these powerfully organized groups with so definite and critical an interest, a regular surplus will be had whether it is earned or not!

[7] Most clearly in Germany where disbursements have been limited to 6 per cent—in a few cases to 8 per cent—irrespective of amounts earned. Simultaneously stockholders and bondholders have lost practically all ownership or contingent property rights.

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of bureaucratically self-perpetuating interests which may have slight ownership stake in the vast properties which the exigencies of special knowledge, outside contacts, inside personal or committee compacts, or other methods of acquiring strategic position enable them to manipulate.[8] The influence of the purse (banking and finance) has long been recognized in the management of corporate affairs. But in recent years the powers of strategically interlocking legal, accounting, management, engineering[9] and other special "competence" and contact groups have grown step by step with — and sometimes follow more or less closely the lines of—increasing functionalization of duties and offices which is, in turn, a by-product of increase in the size, complexity and range of corporate interests.[10]

The net effect is not only that the "atom of property" is split, but also that ownership is, in a sense, being "set aside". The limits of property holdings, as determined by the fictions of legally circumscribed corporate and quasi-corporate ownership rights, no longer define the membership of, nor restrain closely, the coöperating inter- and intra-corporate cliques. A sort of inner-council *Condottieri* has grown up. So far as these inner governing cliques are concerned, one by one all the old ownership frontiers are being abandoned, and power flows out from the inner sancta like water through a shattered system of dykes. The corporation, as Sombart has pointed out at great length, is enabled to amass and extend

[8] Particularly interesting in this connection are the data tabulated by Robert A. Gordon showing the remarkably low percentage stockholdings of management in a sample of "155 large corporations". "Ownership by Management and Control Groups in the Large Corporations", *Quarterly Journal of Economics*, May 1938, pp. 371, 378, 381.

[9] An interesting example, offered by Thurman Arnold, shows how a group of efficiency engineers, having practically no ownership rights in the properties in question, managed to obtain control of almost the whole of the paper-box industry. *The Bottlenecks of Business* (New York, 1940), p. 350.

[10] See, in particular, the data on concentration in *The Structure of the American Economy*, published by the National Resources Committee, under the direction of Gardiner C. Means (Washington, 1939). Also, TNEC Monograph No. 11, *Bureaucracy and Trusteeship in Large Corporations*, by Marshall E. Dimock and Howard K. Hyde (Washington, 1941), chapter vi.

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holdings without limit; but in pursuit of effective power the *Realpolitik* of corporate direction, having once sprung the old restraints of ownership, now enables management to stride afield in a handsome pair of seven-league boots.

No better evidence of how this change takes place can be submitted, in the third place, than is to be found in examination of the bewildering array of devices being forged for creating effective alliances among the major corporate groups. A useful illustration is the growing monopoly of patents,[11] employed as a springboard for enhancing market, price, production and capacity, and numerous other controls which greatly transcend the normal limits and cut in a thousand ways athwart the lines of ordinary corporate power. Such controls may be effected in a number of ways. One method results in drawing the giants closer together at the top of the corporate pyramids. Thus the establishment of the Ethyl Corporation brought together certain special interests of Standard Oil of New Jersey, General Motors and Du Pont. The patents underlying RCA came largely from Westinghouse, General Electric and Bell Telephone, and the subsequent segregation was more a matter of convenience than of separation through incompatibility. The Carboloy Company, manufacturing hard metal compounds

[11] The American Telephone and Telegraph Co. controls 15,000 patents; the General Electric Co. between 8,000 and 9,000. See Thurman Arnold, *op. cit.*, p. 27. A report of the Patent Office notes an increase in the number of patents granted a small percentage of concerns from 1900 on: "The greatest number of patents received by any corporation in 1936 was by the General Electric Company, with 476. It also received the greatest number in 1935, with 521, and even in 1900, it was then at the top of the list of recipients of U. S. patents, having received in that year 100 patents. Corporations that received more than 100 patents in 1936 are: General Electric, 476; Radio Corporation of America, 364; Du Pont Company, 346; General Motors Corporation, 263; Westinghouse Electric and Mfg. Co., 248; Bell Telephone Laboratories, Inc., 236; United Shoe Machinery Corp., 189; General Analin Works, Inc., 152; Westinghouse Air Brake Co., 136; I. G. Farbenindustrie Aktiengesellschaft, 132; American Telephone and Telegraph Co., 110; Celanese Corp. of America, 102." In the same year, "15 corporations received from 50 to 100 patents each; 50 corporations received from 25 to 50 patents each; and 132 corporations received 10 to 25 patents each (the number of patents granted in 1900 was 60% of the number granted in 1936) and these constituted only 2% of the total number of patents granted that year." John Boyle, Jr., "Corporation Patent Holdings", *Journal of the Patent Office Society*, Sept., 1937.

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for cutting dies in machine-tool construction, brought together Krupp and General Electric into a close price-fixing and market-allocation agreement. The two huge German electric-manufacturing concerns, the Siemens and A. E. G. groups, pooled their incandescent lamp patents to form Osram, as did General Electric and Westinghouse in the United States to establish Mazda. Zeiss and Bausch and Lomb; the great German dye trust, I. G. Farbenindustrie A. G., and Standard Oil of New Jersey; the armaments producers of Germany, Italy, France, England and the United States—these and many others have been similarly brought together in close working agreements resulting in price, market, production and other controls.[12]

A number of other well-known factors contribute to this result: control over technical innovations due to ownership of large research facilities,[13] interlocking directorates, "communities of interest", common dependence upon the same financial interests. Paralleling the processes of drawing together at the top, is the spread downward and outward of power and influence from above among the small concerns—a process which springs from the same ability to manipulate resources and controls by inner cliques operating among the giants. The licensing agreement of the Hartford-Empire, Owens-Illinois group in the glass-container industry is symptomatic. Here the group was able to decide who should produce what types of glass containers, in what amounts, in what territories they might

[12] A particularly interesting example of how research and patent exchange has brought industries together is shown on an "Electronic's Chart of the Sound Picture Industry of the World", reproduced as a frontispiece by Harry A. Toulmin, *Trade Agreements and the Anti-Trust Laws* (Cincinnati, 1937), which shows how Westinghouse, General Electric, and the American Telephone and Telegraph Co. via RCA have been brought into close working arrangements with British, French, German and Dutch producers of film apparatus on the one hand, and systems of movie distribution on the other.

[13] In some cases—the great German dye trust is an outstanding example—pooling of research facilities played a major rôle in the grouping of the chemical industry first into a series of interlocking cartels, then into a "community of interests", and finally into formal corporate consolidation. Thurman Arnold cites a number of examples where through leverages of a similar character large concerns have been able to absorb the small (*op. cit.*).

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sell, and at what prices.[14] Similar controls are exercised by the Ethyl Corporation, the large movie producing companies (block-booking), Osram, Montecatini, Schneider-Creusot, Krupp, Vickers Imperial Chemicals and others. The net effect of such controls, brought about through patent or other powers vested in the big combines, is to place the small, so-called "independent" producer or distributor[15] in a position of permanent vassalage to the giants. The various reports of the Temporary National Economic Committee, the Senate Committee on Patent Pooling, and the Nye Munitions Committee show how far and how exacting this type of control over the small business man is becoming. The field of distribution offers many similar examples.[16] In Japan the small are likened to "subcontractors" to the large. But the picture is reproduced wherever the giant enterprises have struck root, and wherever the forms of law[17] make possible establishment of such coercive controls by the large over the small.

A fourth and parallel development is the rise to dominating positions within the larger corporate complexes of closely interlinked families and blocked familial and interfamilial interests.

[14] See, "Investigation of Concentration of Economic Power", *TNEC Hearings*, Part 2, Patents, Automobile Industry, Glass Container Industry.

[15] An excellent example is provided by the case of the McKesson Robbins fiasco, in which it developed that through a system of job-lot selling on long-run contracts the firm had been able to force increasing numbers of retail drug outlets into a position of almost complete financial dependence on it. In the city of San Francisco, it has been estimated, calling in of outstanding obligations to the defunct concern would immediately have bankrupted about 40 per cent of all the retail drug outlets in the city.

[16] See, in particular, the Hearings on the Robinson-Patman Act, and the anti-trust indictments of the Department of Justice against the Borden and National Dairies Companies. Also literature on the agitation in Germany against the department store combines of Wertheim, Leonard Tietz, Karstadt's, Bata (stores serving as outlet for the manufacturing plants of Bata), etc.

[17] Thurman Arnold has intimated in a number of speeches that the net effect of attempts to enforce the Sherman Anti-Trust Act has been only to streamline and, in some respects, render more circuitous—but not seriously to inhibit the growth of—"combinations in restraint of trade." A like fate seems to have befallen the famous "law against the abuse of economic power" passed in Germany in 1923. Rudolf Callman, *Das deutsche Kartellrecht* (Berlin, 1934).

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"America's 60 Families"[18] are paralleled by the French "200",[19] the aristocracy of British "Cousinhood",[20] the Junker-industrial baronry of Nazi Germany,[21] the *Zaibatsu* of Japan, and the aristocratic *latifondi*-industrial princelings of the Rome-Milan-Turin "Axis". The family pattern of the *Zaibatsu*, outlined in a recent article in *Pacific Affairs*,[22] is merely the simplest and most obvious of these family complexes. But like the House of Mitsui, the group de Wendel,[23] the spreading of empires of the Du Ponts and the Rockefellers, the ramifications of the houses of Buccleuch and Beaufort, or those of Siemens, Krupp and Thyssen in Germany, these other ownership complexes are being built up and consolidated by intermarriage, trust segregations and administrations, club,

[18] See in particular, Ferdinand Lundberg, *America's 60 Families* (New York, 1937). Large family-controlled corporations in America, cited in a recent study of the nation's 200 largest non-financial corporations made by the Federal Income Tax Division, included the Ford family with $624,975,000 in the Ford Co.; the Du Pont family with $573,690,000 holdings in E. I. Du Pont and the U. S. Rubber Co.; the Rockefeller family with $396,583,000 in the Standard Oil Cos. of New Jersey, Indiana and California and Socony Vacuum Oil Co.; the Mellon family with $390,000,000 in Gulf Oil, Alcoa and Koppers; the McCormick family with $111,102,000 in the International Harvester Co.; the Hartford family with $105,702,000 in the A. and P. Co.; the Harkness family with $104,891,000 in the Standard Oil Cos. of New Jersey, Indiana and California and Socony Vacuum Oil Co.; the Duke family with $89,455,000 in Duke Power, Alcoa, and Liggett and Myers; the Pew family with $76,628,000 in Sun Oil; the Pitcairn family with $65,576,000 in Pittsburgh Glass; the Clark family with $57,215,000 in Singers; the Reynolds family with $54,766,000 in Reynolds Tobacco; and the Kress family with $50,044,000 in Kress. *New York Times*, Oct. 16, 1940.

[19] "Blum Grapples with 'the 200 Families'", by P. J. Philip, *New York Times*, June 14, 1936.

[20] *Tory, M.P.*, by Simon Haxey (London, 1939).

[21] Karl Brandt, "Junkers to the Fore Again", *Foreign Affairs*, vol. 14, Oct. 1935, pp. 120-134; also, Aurel Kolnai, *The War Against the West* (London, 1938), pp. 322-393. An interesting example of family influence within a single industry, the German machine-making industry, is provided by a recent article by Dr. Otto Suhr, "Familientradition im Machinenbau", *Zeitschrift für Betriebswirtschaft*, Feb. 1939.

[22] "Policy Centralization in Japan Under the Kokutai Principle", by William H. Taylor and Robert A. Brady, in *Pacific Affairs*, vol. XIV, No. 1, March 1941, pp. 51-77.

[23] *De Wendel*, by Louis Launay (Paris, 1939).

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fraternal, clique, and "group" (de Wendel, Gillet, Krupp, Du Pont, etc.) interlinkages which cumulatively take on a consanguinous, familial, patriarchal, "dynastic" character, and which show next to no "real" identification with properties bounded by formal corporate holdings, or with national or even the usual types of business frontiers. "Influence", "alliances", "mutual interests", and nepotism move into the center of the picture.

A fifth factor in appraising the preponderating rôle of the big corporations in the larger sphere of business policy-forming power is found in the fact that leadership within the circle of the giants seems to be shifting steadily toward the heavy and the "laboratory-baby" industries. The first, by virtue of their critical position in the producers' goods industries during the period of rapid expansion of industrial apparatus in the north Atlantic industrial nucleus before 1914, and their intimate connection with war and armaments programs from that time on, have long taken the lead and occupied positions of commanding importance in the field of corporate concentration. The "laboratory babies"—electric manufactures and power, rubber, automobiles, airplanes, radio, aluminum, petroleum, movie production, telephone and telegraph, rayon, plastics, heavy chemicals—on the other hand either have been launched on a large-scale basis or have by forced-draft growth become gigantic manufacturing and marketing systems early in their careers.[24] Most of these are less than fifty years old; all are dominated by huge, closely interlocking corporate complexes.

The significance of this leadership has three aspects. (1) Metals, fuels and heavy chemicals, since 1914, have been increasingly dependent (secularly) upon war and armaments preparations for full prosperity. The principal exceptions are

[24] Many older, empirically grounded industries — of which steel-making is itself a conspicuous example—have long since become dependent upon laboratory research. In the case of steel, continuous heat-processing, vertical integration from the ores and fuels on through to the finished plates or tubes, etc., by-product utilization (e.g., ammonia, tars, and allied distillates from by-product coke ovens), increasing use of alloys such as molybdenum, magnesium, nickel, etc.—all require heavier and more consistent reliance on laboratory experimentation and control.

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to be found in the United States during the middle and late twenties, and in the Ruhr and Rhine during the rehabilitation and "rationalization" period (1924-29). After 1914 elsewhere, and in the United States after 1939, war and armaments programs comprise so large a part of total demand that once the adjustments in capacity have been made to meet these markets permanently, the failure of such demand looms as a major and irreparable catastrophe not only to themselves, but also to the entirety of the industrial complexes of which they are the gravitational centers. (2) The heavy and armaments industries have, with the advance of science and technology, largely grown together "organically" at the manufacturing base. So close have become the materials, processing and, in part, product interdependencies among coal, coal by-products, heavy industrial chemicals, war munitions, steel, steel-alloy, light metals (in particular aluminum and magnesium), armaments, shipbuilding, machine and machine-tool building, and numerous other allied industries that they form a series of interlocking industrial complexes where only the fictions of corporate groupings survive—as in the railroad systems of the United States and England—to confute the impression that one is dealing with a single technological network. (3) There is no clear line separating these heavy-armament industries from the "laboratory babies". Neither technologically nor in terms of the configuration of corporate interests can a very clear line of demarcation be drawn in any major industrial country between heavy and light chemicals, between machine industries manufacturing for peace and for war, between explosives and gas manufacture and the making of rayon, nylon and plastics, between the manufacture of electrical apparatus and the alloy and light metals manufactures on the one hand and the automobile, rubber, airplane, engineering and similar industries on the other. If space were available, illustrations from both the technological and the corporate sides could be multiplied.

Firms working in these fields are thus drawn together by a common complex of scientific problems, manufacturing problems, and problems of management and control. Access to

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the field is increasingly shut off by monopoly rights over laboratories, exclusive and patent-controlled processes and products, systems of pooling of patents within narrower and narrower circles, high costs of initial capital requirements, the inability to command a market without grant of special privileges by concerns already existing in the industry, but above all, by the nature of the industrial complex the newcomer must be adjusted to at the outset.[25] All the necessary conditions exist, in short, which are required for expansion of super-monopoly powers throughout these complexes, as well as throughout the individual corporations that make them up. On the other hand, in so far as they are dependent upon war or public works demands of government, they are faced with the further monopoly-encouraging conditions of monopsony—single buyers. Probably half the demand of Kuhlmann, Schneider-Creusot, Montecatini, Vickers, Krupp, Skoda, specialized branches of Bethlehem, Du Pont, the *Zaibatsu,* and of the various aircraft companies falls into this class, whether war is being waged or not. In war, some such a proportion or higher becomes valid for the bulk of other companies falling into the above classifications. As will be shown later, war or a status of suspended belligerency is swiftly becoming the normal, not the exceptional, state of contemporary affairs; and the existence of a single buyer almost invariably promotes combination against sellers. In war time the rule becomes a maxim.[26]

Two other factors deserve mention in this catalogue of forces which cumulatively enhance the relative importance of the giants in the larger coördination movement. They need not detain us long, since both are obvious and well known. The

[25] Factors of a management and service character have played a very important rôle in the combination movement in public utilities in general. James C. Bonbright and Gardiner C. Means, *The Holding Company* (New York and London, 1932), pp. 176-187, 312-315.

[26] Once capacity has been adjusted to war demands, the conditions of peace mean excess capacity and unemployment which, if the war realignment is structurally far-reaching, can probably be taken up only by huge public works programs, perpetuating into peace times, the greater the excess, the monopoly-promoting conditions of monopsony. All inter-cartel agreements, of course, have a like effect, and war tends greatly to accelerate such compacts.

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first is the fact that the interlinkages between the great industrial combines and the central financial and banking institutions have generally become so close that the division between them is functional rather than corporate. The greatest industrial concerns in Japan and Germany are the principal bankers. The *Crédit Lyonnais* was probably the most powerful single force in French industry. Equally close are the tie-ups between the great central banks and the huge industrial and transport combines in Italy, England and the United States.[27] The finance committee with its various banking and other financial connections tends to come to the fore within the industrial control pyramids; simultaneously blocs of special industrial interests tend to dominate the policies of the great banking houses which stand at the center of the financial webs of control upon which the entire business community is dependent.

There is a final sphere in which the power of the giants over smaller concerns is practically without recourse from any angle, that of international trade. The foreign banking, industrial and commercial systems of concessions, branches, affiliates, minority holdings, communities of interest, interlocking directorates, compacts and agreements of the several great national combines are too well known to require elaboration here.[28] It only needs to be pointed out that in the principal lines of manufacture and sale no small enterprise or grouping of small enterprises has any chance of breaking into foreign markets against the opposition of the giants acting in concert, or without ally-

[27] See Professor Robert Liefmann's encyclopaedic *Beteiligungs- und Finanzierungsgesellschaften* (1923 ed., Jena), covering English, French, German, American, Swiss, Belgian and other financing holding company, trust, investment trust, and similar forms of business organization.

[28] Two very interesting recent examples are provided by exposés of the armaments industry's ramifications and the international network of the Aluminum Company of America. See H. C. Engelbrecht and F. C. Hanighen, *Merchants of Death* (New York, 1934) (largely based on data from the Nye investigation of the munitions industry), and proceedings in equity in the District Court of the United States for the Southern District of New York, *Brief for the United States in Support of a Preliminary Finding of Conspiracy among Alcoa, Aluminum Limited and the Foreign Aluminum Companies* (June 1, 1939).

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ing themselves with or selling through one or a group of the latter.

On this score, there is much less of a tendency for the giants to help their own small competing nationals in foreign markets than for them to divide by special agreement domestic and foreign markets among the huge combines dominant in the several national territories.[29] Thus Krupp, Vickers and Schneider-Creusot got together to divide and allocate markets for arms and munitions. General Electric and Krupp divided the markets for hard metal compounds; the German Dye trust and Standard Oil, markets for hydrogenated oil products; and so ad infinitum. In these agreements markets are increasingly divided along the following lines: (a) the domestic market is reserved for each, or some specific portion of it is allotted domestic manufacturers (e.g., the Bausch and Lomb-Zeiss agreements on optical glasses; General Electric and foreign producers on incandescent lamps); (b) the adjoining space or continental area is reserved for each or a combination of each, the concept of *Grossraumwirtschaft* (e.g., agreements of Du Pont and Imperial Chemicals on munitions; Alcoa and the Aluminum Cartel); and (c) "competing" territories are handled increasingly in such a fashion that either (1) the price structures agreed upon will not be distributed through "open competition", or (2) dumping is resorted to on a bitterly cut-throat basis. If the former, it is usually because patents are so pooled or agreements so drawn that "outsiders" cannot possibly break in, and if the latter, then because no small con-

[29] "One case concerns an American optical company which, during the last 5 years, has manufactured, distributed, and sold approximately 50% of all U. S. military optical instruments. These have included periscopes, range finders, altimeters, bomb sights, torpedo directors, etc. This corporation arranged with a leading German corporation, operating in the same field, to divide the world market; to limit sales to allotted territory; and to fix and maintain prices and terms of sale. The German and American corporations agreed to conceal the existence of the contract from third parties, and the latter corporation agreed to pay to the other a royalty equal to a percentage of the gross sales price of each military optical instrument sold, including equipment sold to the United States Government." Resolution by Sen. Wheeler calling for an Investigation of Interstate Commerce Conditions Affecting National Defense, Sept. 18, 1940.

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cern unaided and by itself can possibly meet the pace once the struggle reaches a sanguinary stage.[80]

Such a classification of the reasons for the growing relative importance of the giants in the formulation of business policies does not exhaust the possible listing; but it probably covers the most important cases. A little careful inspection of the voluminous records standing behind these generalizations will show convincing evidence not only that these trends are contemporaneous and mutually reënforcing, but also that no competitive restraints or combinations of competitive restraints can any longer be expected to stop or seriously to inhibit the vaulting powers of these great interlinked aggregations of large-scale corporate enterprises. Government may be able to do so if, when and where it is able to shake itself free from direct or indirect manipulation by the powers it seeks to control. But so far as it fails to do so, by so much the mantle of political authority is simply shifted de facto from its former popular, or constitutional, base to another which stems from the inner councils of these huge corporate complexes.

2. *Changes Underlying Policy-Formulation within the Cartels*

The term "cartel" has lost its old precision. Once it stood simply for a contractual relationship, usually enforceable at law, between a number of enterprises which had banded themselves together for a fixed period of time in order the better to regulate prices or production or marketing conditions, or some other feature of business relating to a single or a closely related group of commodities produced by its members. Now the term has come to mean any sort of compact, whether recognized by law and enforceable through the courts or not, be-

[80] It is noteworthy that the small American business groups have been able to see no other solution of these problems than to pool resources and behave—in imitation of those against whom they are organizing—collusively with respect, not to the large concerns or their trade associations, but to that portion of the public which it may be able to call its own. Conversely, one will search through the records of monopolistic practices of the large combines in vain for instances where the little business man was left unscathed even when he was not the direct object of attack.

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tween two or more concerns for the purpose of manipulating one or more of the elements of conducting business to the advantage of the participating parties. Even in the classical home of the cartel, Germany, it has long been difficult to distinguish between the practices of cartels and those of many of the more powerful trade associations such as the General Federation of German Machine Tool Builders (V.D.M.A.) or the Association of German Iron and Steel Industrialists. British writers use the terms "trade associations" and "cartels" more or less interchangeably. In France the members of the *Comité de Forge* have entered into many different *comptoirs*, but what of the *Comité de Forge* itself? Many of its activities have long been of a distinctly cartel-like character.[31] Thurman Arnold of the Anti-Trust Division uses the term to apply to any American trade association pursuing policies which bind its members to behave non-competitively.[32]

More than mere loose thinking is involved here. Actually, a vast and complicated system of collusive practices has come into being since the first World War, having the effect of cartel agreements but appearing under a multiplicity of guises and given effect through a wide variety of associational forms. To the economist it is the realities of practice, not the fictions of law or the accidents of terminology, which must occupy the center of the stage. From this point of view, it is probably not too far from the truth to say that practically all of the swiftly proliferating meshwork of trade associations found in all capitalistic countries of the world perform one or more functions of a distinctly cartel-like character. Adam Smith's dictum applies to the usual, not to the exceptional, case; and even those which are economically functionless seem on inves-

[31] See, in particular, Pierre Bezard-Falgas' *Les syndicats patronaux de l'industrie metallurgique en France* (Paris, 1922).

[32] Compare Thurman Arnold, *The Bottlenecks of Business*, with the report on cartels prepared by Theodore J. Kreps, and presented before the Temporary National Economic Committee. The Kreps view, which seems to have dominated very largely the thinking of Mr. Leon Henderson of the TNEC, inclines quite favorably toward good cartels, while frowning, rather mildly, at the bad.

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tigation to be going through motions, like the wind-up of the pitcher before delivery of the ball, prefatory to more forceful and purposive action.

A couple of examples will serve to show how pervasive cartel-like policies have become. In Germany, none of the laws commonly called "cartel laws" apply singly and solely to collusive groups formally recognized in law as cartels. For example, the famous "Law Against the Misuse of Economic Power" (*Verordnung gegen Missbrauch wirtschaftlicher Machtstellungen*), passed in 1923, applied to "Syndicates, Cartels, Conventions and Similar Agreements". The text of the law, as of those which followed in July 1930, August 1930, August 1931, December 1931, and July 1933, refers but incidentally to those combinations as "cartels". The last named law, the "Law Concerning the Forming of Compulsory Cartels", places the cartel at the center of the discussion only because it refers to all agreements entered into under authority of preëxisting laws by the generic term "cartel".[33] The Cartel Bureau (*Kartellstelle*) of the old National Federation of German Industry (*Reichsverband der deutschen Industrie*) handled cartel problems as specialized activities of its members, separately grouped in the Federation by industry and trade categories and organized as trade associations. The left hand took care of cartel problems; the right hand managed the larger interests into which cartel practices were dovetailed![34]

There can be no question but that the National Federation of German Industry and all of its member bodies were engaged directly or indirectly in the exercise of cartel controls; and, as has been pointed out elsewhere,[35] the organizational

[33] For texts of these laws, and an exhaustive commentary on the history of cartel policy in post-war Germany, see Rudolf Callmann, *Das deutsche Kartellrecht.*

[34] See Max Metzner, *Kartelle und Kartellpolitik* (Berlin, 1926); Horst Wagenführ, *Kartelle in Deutschland* (Nürnberg, 1931).

[35] See Robert A. Brady, *The Rationalization Movement in German Industry* (Berkeley, 1933), chapter v, and *The Spirit and Structure of German Fascism* (New York, 1937), chapter ix; also, W. F. Bruck, *Social and Economic History of Germany from Wilhelm II to Hitler, 1888-1938* (Cardiff and London, 1938).

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network of pre-Nazi Germany, brought together and centralized in the *Spitzenverbände*, was well-nigh all inclusive by the time the new régime took over. Not far behind Germany of that date stand England, France [36] and the United States of the present. Fascist Italy and post-Nazi Germany [37] have seen the web of cartel-like controls still further extended.

A second example may be taken from the building industry in the United States. According to Assistant Attorney General Arnold,[38]

> Producers of building materials have fixed prices either by private arrangements or as the principal activity of trade associations. Owners of patents on building materials have used them to establish restrictive structures of price control, control of sales methods, and limits upon the quantities sold. . . . Some of these patent holders have taken advantage of their control over patented products to require their licensees to give them control of unpatented products also. By the use of basing point systems and zone price systems, various building materials industries have established by formula a rigid structure of uniform prices throughout the country; and in some of these industries such price formulas have encouraged the wasteful location of industrial plants and the wasteful shipment of products to great distances. The use of joint selling agencies has been another means by which some of these groups have undertaken to maintain their

[36] The "new" corporative order recently announced in conquered France seems much less revolutionary when viewed in light of the recognition of the *Confédération Générale du Patronat Francais* following conclusion of the Matignon Agreement in 1936 with the *Confédération Générale du Travail*. The new groupings, the new tone, and the new policies which followed the Agreement were entirely in keeping with Nazi and Fascist patterns.

[37] "Only transitorily and superficially did the beginnings of the new relationship between the state and the economy appear hostile to cartels. The development of National Socialist cartel policies during the last year shows a replacement of rigorous cartel supervision by policies designed to guide the economy and regularize markets with and through the cartels. This is readily shown in the law and in legal interpretation of the law." Fritz Huhle, "Kartellpolitik und Wettbewerbeordnung", *Zeitschrift für Betriebswirtschaft*, 1938, pp. 337-349. See also, Bruck, *op. cit.*, pp. 222-226.

[38] In an address before the National Association of Purchasing Agents at the Fairmont Hotel, San Francisco, California, May 22, 1939, Department of Justice news release.

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prices. In some groups the various producers have subscribed to the theory that every member of the industry should have a definite share of whatever business there is to be done, and that no concern should try to get more than its share by price competition.

Supplementing these various devices for keeping the prices of building materials high has been a series of other devices used to discipline competitors who are unwilling to play ball. In one industry the means is cutting off the supply of raw materials. In another it is starting a series of harassing lawsuits. In a third it is the harassment of distributors by selling through the seller's own factory branches at prices lower than those at which the distributor is permitted to resell. In a fourth it is the maintenance of orthodox channels of distribution by concerted refusal to sell to groups representing new methods of sale or new price policies.

But this is only the beginning. In addition "there is a growing concentration of control in many of these industries" through combination, merger, communities of interest, etc. This is likewise true for the distribution of building materials and down through all the various systems of contracting and subcontracting characteristic of the industry.[39] Nor are the data local; the situation is apparently typical of the building industry throughout the entire country.[40] Yet the situation

[39] In some of these efforts the trade unions are alleged to have coöperated freely. See, e.g., Civil Action No. 698 in the District Court of the U. S. for the Western District of Pennsylvania, the United States vs. the Voluntary Code of the Heating, Piping and Air-Conditioning Industry for Allegheny County, Pennsylvania, *et al.*, Dec. 8, 1939.

[40] As shown by the effort of building materials dealers in "41 federated units located in approximately 32 States throughout the United States" (FTC Docket No. 2191, Dec. 30, 1937), the local, regional, and in some respects the national markets for building materials are governed by cartel agreements affecting the bulk of the industry. Though enjoined from further such practices by the FTC in 1937, it would not appear from the above-cited statement by Mr. Arnold, nor from the numerous indictments handed down by the Anti-Trust Division in 1939 and 1940 against the building industry, that monopolistic practices were checked nor even seriously impeded by the FTC action. "The housing investigation [conducted by Mr. Arnold] resulted in the indictment of 1,358 defendants" (*New York Times*, Nov. 25, 1940), and the evidence adduced was such as to encourage belief that Mr. Arnold had even then but barely scratched the surface. In fact his economic adviser, Corwin

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within this industry is not unique. In approaching the problem of cartel-like controls within the California food industries, for example, the Anti-Trust Division faces conditions so similar to what the London *Economist* calls "feudalistic cartel controls" [41] that the prosecution has only one alternative to passing up the whole matter as beyond redemption, and that is to issue a blanket indictment against the entire industry.[42] Similarly with the petroleum, movie production, electric household appliance, milk,[43] and many if not most all of the important industrial groupings of America.

Speaking very broadly, it seems possible to summarize the general lines of development in this expansion and permeation of cartel policies throughout the national systems of the various capitalistic countries under a few headings. (1) The line between combinations, mergers, communities of interest, intercompany compacts on the one extreme, and large national trade associations on the other, is, of course, structurally pretty clear. But between the two poles there is an almost infinite gradation of constantly changing forms, techniques, practices and policies. In general, trade associations throughout the

D. Edwards, has clearly so stated in his illuminating discussion, "The New Anti-Trust Procedure as Illustrated in the Construction Industry", *Public Policy*, vol. II, pp. 321-340.

[41] "The Economic Front", *The Economist*, Dec. 9, 1939. See also the article "The Cartellization of England" in the issue of March 18, 1940.

[42] Under the California Pro-Rate Act, for example, 65 per cent of the producers by number and product may have a state of "emergency" declared by the State Agricultural Commissioner, after which a Pro-Rate Commission can be established possessed of power to establish crop quotas, crop surpluses, length of the canning season (14 to 16 days for peaches, for example), grades, grades that are marketable, etc. Costs of administration, such as advertising, are collectible through the state tax machinery, and failure to pay is regarded as the equivalent of tax delinquency. Numbers of farmers are not accurately known in most crop districts, and in many cases the farmers are either tenants of processors and distributors or of banks, or in debt to concerns such as American Can and Continental Can; for all practical purposes the agreements are completely controlled by non-farmer interests.

[43] See, in particular, the Anti-Trust Division indictments of the Borden Company, *et al.*, in the Chicago and Detroit districts. Much the same picture as given in these indictments evidently holds for most other large milk-marketing areas. See also, Corwin D. Edwards, "Trade Barriers Created by Business", *Indiana Law Journal*, vol. 16, No. 2, Dec. 1940, pp. 169-190.

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world are taking on cartel functions so rapidly that the distinction between different types of cartels and these associations is badly blurred, and in many respects lacking in all essential differences. This is recognized as true by leading authorities in England, France, pre-Nazi Germany, the United States and Japan. In Fascist Italy and Nazi Germany differences are in part technical and in part functional, but in the main cartel-type controls have been accepted as normal and natural for all trades and industries, and the attitude, if not necessarily the detailed forms of their respective "corporate economies", appears to be prototypal for developments in other countries of comparison.

(2) It is a characteristic common to practically all leading trade associations and cartels that they seek to eliminate "outsiders" or "free-riders". The compulsory cartel has achieved this objective in Germany. The same holds for some of the more closely held British and French cartels, the various agricultural marketing agreements set up in the United States, Germany, England and Japan, all the trade associations which have succeeded in preserving the leading controls envisaged in N.R.A., the new arrangement of groups under the *Confédération Générale du Patronat Francais,* and, of course, in general for the economies of the directly corporate systems. Elsewhere there is a general tendency either to eliminate "outsiders" entirely, or to bring together in the collusive group such an overwhelming majority of the industry that "free-riders" would be either of only local significance,[44] or so small and scattered that they might be forced into the line at will upon pain of total extinction.

(3) There is a clear and wholly unmistakable tendency for the large concerns to dominate more and more completely all forms of cartels and trade associations. This was clearly shown in the bulk of the leading N.R.A. codes, is evident in most of the national and regional trade associations in America, and appears to be true of all the leading German, French and British cartels and trade associations. Frequently cartel activi-

[44] Even here there is a tendency to force recalcitrants into line on many issues—such as labor policies, taxation measures, price maintenance, etc.

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ties have paved the way for combination of the horizontal type, as for example in the German and British heavy chemicals industries. Sometimes the way was prepared by cartels for vertical integration, with the result that independent enterprises tend to disappear entirely.[45] Frequently, as in the British salt, thread, chemicals and armaments industries, trade associations were organized directly as adjuncts for further extending the monopolistic controls of large combines.[46] The existence of cartel controls not uncommonly enhances the superior bargaining power of large concerns producing goods or using materials not included within the cartel bailiwick, as in the case of the vertically organized German steel combine contrasted with the "pure" collieries. Profit margins at different stages of production need not be charged by the former when producing for "self-consumption" with the result that they possessed a considerable — at times well-nigh decisive — advantage over non-integrated competitors.[47] But in nearly all cases, both within the totalitarian countries and elsewhere, the lead in the organization and direction of both cartels and trade associations is typically and increasingly being taken by the corporate giants. The policies of these organizations, that is to say, are being molded to the interests, the outlooks and the programs of the great monopoly-minded corporate groupings.

(4) That is why the following trends, clearly discernible within both cartels and trade associations in general, take on such great significance. (a) These organizations are becoming more permanent, less easily broken up by the changing fortunes of business cycles, and their contractual or semi-contractual obligations are entered into with an eye to longer-run ob-

[45] See Herbert von Beckerath, *Modern Industrial Organization* (New York and London, 1933), in particular chapters ii and viii.

[46] There are many American examples: The National Glass Distributors Association, organized by the Pittsburgh Plate Glass Company; the New York Sheel Metal Roofing and Air-Conditioning Contractors Association, dominated by the Fox Furnace Company; the Associated Milk Dealers of Chicago, dominated by Bordens.

[47] Particularly interesting in this connection is the evidence submitted to the *Enquete Ausschuss* (see *supra*, note 6) by various industrialists connected with the iron, steel, coal and heavy chemicals industries.

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jectives. Simultaneously, (b) interests are spreading out from a single line of control such as prices, or production, or marketing areas, or conditions and terms of delivery, or patent pooling, etc., to take on other functions, and, in some cases (notably the "compulsory cartels"), the whole range of cartel functions. (c) With this go tendencies for the cartel to resort to some degree of central management of supplies or sales ("syndicates"), or labor, or engineering and accounting, etc. This is, in turn, paralleled by a general and well-nigh universal tendency for all these associations—in "proportion" as they take on a more cartel-like character—to band or group together into regional, commodity and industry central or "peak associations" (*Spitzenverbände*). Finally, (d) there is an almost universal tendency, once this level of development has been reached, for members increasingly to try to limit business transactions to members, and for trade associations and cartels to deal with each other as exclusive agents for their respective memberships. The governance of the resulting system of intertrade compacts, agreements, negotiations and relationships then comes to be one of the principal activities of the *Spitzenverbände*.[48]

(5) The relationship between these tendencies, on the one hand, and the correlative rise and universalization of "mercantilistic" practices—wherein the normal course of business as usual leans even more heavily upon a generalized system of state aid—within the several national states, on the other, becomes cleraly one of mutuality, interaction and interdependence. The two lines of change have a common historical origin, and they have run their parallel courses over the same

[48] See Bruck, *op. cit.* In the 1925 *Yearbook and Register of British Manufacturers*, published by the Federation of British Industries, mention is made of "a strong feeling . . . that so far as possible, members should give each other preference in placing orders, and the system of inter-trading is now rapidly gaining ground amongst members" (p. 23). The Nazis and the Fascists, with their widespread systems of intertrade compacts, appear as the culmination and logical fulfilment of a process which becomes more and more formal and general as the networks of business spread out, lines of influence are transmuted into frames of control, and powers are gathered up and centralized in peak associations.

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span of time. In a multitude of ways advance in one leads to advance in the other.

Neither cartels nor trade associations, of course, can any longer be called "children of necessity". But tariffs, subsidies, subventions, government loans without interest, laws allowing resale price maintenance, etc., can, however, be regarded as successful products of the mounting demand of massed special interest groups of business men, and their direct, coördinated and organized efforts to see that governments stand perpetually prepared to grant whatever aid their several plans and programs require. Without important exception in any of the major capitalistic countries, the necessary enabling laws have been lobbied through by business interests. The *Spitzenverbände* endeavor to see only that the basic laws and the mass of administrative decisions flowing from them generalize the gains and even out the losses. The rule, as in early mercantilistic times, becomes one of concession, grant, honoraria, "special privilege". Fully rationalized and centrally governed via the *Spitzenverbände*, with the basis one of organization reaching to the outer limits of trade and industry, the logical result of such generalized *Priviligierung* is cumulative approximation to the generic conditions of the corporate or "guild" state.[49] *

[49] This is the term employed by the official Italian propaganda agency in America, the Italian Library of Information, to characterize for American readers the leading features of Fascist social-economic organization. See *The Organization of Production and the Syndical Corporative System: An Outline Study.*

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ROBERT A. BRADY

COLUMBIA UNIVERSITY

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THE TAXATION OF EXCESS PROFITS III

THE computation of invested capital was analyzed in the preceding installments * of this article chiefly in terms of the ordinary business corporation. Special problems arise if the tax is extended to other fields.

Particular Scope of Tax

52. If the tax applies, in general, to all corporations so far as they engage in business and utilize capital, are there any reasons for excluding partnerships, individual proprietorships, trusts and coöperatives? Is a distinction to be drawn between extractive, manufacturing and commercial establishments on the one hand and, on the other, financial institutions, insurance companies, investment trusts, holding companies, farmers, professional men and rentiers? Is exemption to be granted to small taxpayers, to transitory businesses and to isolated capital transactions? Is special provision needed for monopoly elements already under government regulation, including those in public service corporations, certain government-contract work, and the use of patents and copyrights? Evidently much remains to be done in staking out the boundaries of the tax even if a decision is reached to include only gains from the use of capital or capital instruments.

In passing it may be noted that an excess profits tax law (or regulations) may obviate some confusion if it specifies the conditions under which capital is to be deemed to be present. Otherwise, even aside from major aspects of this problem discussed below (for example, cost of training professional men), uncertainties may arise when there is only "nominal

* The first two installments of this article appeared in the December 1940 and March 1941 issues of the QUARTERLY.—ED.

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capital", enjoyment of credit owing to financial responsibility, etc.[50]

Scope of Tax:
Form of Business Organization

53. Unincorporated business enterprises might appear at first sight to have no particular claim for exemption. The mere fact of incorporation would seem to be irrelevant. Both in principle and in practice, however, there are grounds for distinction, though they may or may not be strong enough to justify exemption.[51]

In principle, it is the absence of limited liability that makes the difference. If an individual proprietor has $10,000 of assets in his business, including cash and securities clearly earmarked for the business, and has $10,000 in personal assets (for example, personal bank account, pleasure car), with what capital amount shall the earnings of the business be compared to detect excessiveness? If the business were incorporated, the owner might find it advisable to add to the business' cash balance at the expense of his own, since the concern would no longer be able to reassure creditors by pointing to the personal balance. Moreover, as long as the business is unincorporated, the entire $20,000 is more or less at stake in the enterprise, although only $10,000 is actually employed in it, and (we may suppose) only another $5,000 runs any appreciable risk of being called upon. No one best way to handle the problem seems available; possibly some rough but general rule could be applied—for example, set the invested capital at 50 per cent more than the amount actually employed actively in the busi-

[50] Robert M. Haig, "The Taxation of Excess Profits in Great Britain", *American Economic Review*, Supplement, December 1929, p. 28 (note); American Economic Association, "Report of the Committee on War Finance", Supplement No. 2, March 1919, of *American Economic Review*, pp. 25-26.

[51] Thomas S. Adams, "Should the Excess Profits Tax Be Repealed?", *Quarterly Journal of Economics*, May 1921, pp. 374-75; House of Representatives Report No. 767, 65th Congress, in *Internal Revenue Bulletin*, Cumulative, 1939-1 (Part 2), p. 97, and Senate Report No. 617, *ibid.*, p. 124; Robert H. Montgomery, *Excess Profits, Estate, Gift, Capital Stock Tax Procedure 1926*, pp. 118-19.

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ness, unless the personal assets were smaller than this 50 per cent. The 50 per cent is of course arbitrary; some study of specific cases might reveal a better general figure; in time, it might even be feasible to develop a figure for each industry or size-group. It would probably be agreed that in any case the answer should allow unincorporated concerns a greater figure for capital investment than the amount of assets actively used in the business.

In practice, the difficulty of ascertaining the amount of assets actively used in the business may be great. In the first place, many small businesses (which are usually unincorporated) fail to keep records. Secondly, where they do keep records, little or no distinction may be made between personal and business assets; the proprietor may, for instance, have but one bank account—or no bank account at all. The problem can doubtless be solved in a reasonably satisfactory manner whenever sufficient attention is given to each case. If every unincorporated enterprise is included, such attention cannot be given but this is a matter for discussion under small businesses as such (No. 64 below).

Experience gives no conclusive answer whether the inclusion of unincorporated enterprises is desirable and practicable. The Federal Revenue Act of 1917 included them; the Revenue Act of 1918 excluded them. But it may be doubted that the inclusion was, or could have been, given a fair trial at that time from the point of view of a permanent tax introduced after an adequate period of preparation. Some of the foreign taxes included unincorporated enterprises; some did not.

54. Trusts do not offer these difficulties of principle and practice and may therefore be classed with corporations. Cooperatives are quantitatively unimportant in the present problem, and in any case the answer would depend largely on broader issues concerning those organizations under the ordinary income tax.

55. Not all corporations need be taxable simply because all capital-using enterprises are taxable. Even aside from non

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profit corporations, there are business corporations that employ little or no capital, for example, the "personal service corporations" of the Federal Revenue Act of 1918.[52]

56. In some countries, government-owned businesses have been subject to the excess profits tax; in Great Britain, in the World War, a municipality was exempt from the tax only if the net result of all ventures was a burden on local rates (property tax).[53]

Scope of Tax: Industries

57. Financial institutions and insurance companies seem to have no particular claim to exemption from an excess profits tax, but they will give rise to some special problems in the computation of fair return, invested capital and profits. Banks, under certain circumstances (as during the past decade), experience large increases in their assets practically without cost; that is, they pay little or no interest on the money the assets represent. In these circumstances it may be reasonable to set a particularly low statutory (tax-free) rate of return under the excess profits tax; or, if the common statutory rate is maintained, borrowed capital (deposits) might be excluded in part or in whole in computing invested capital.

58. With insurance companies the chief difficulty would be one that already exists under the income tax, that is, the problem of getting a reasonable definition of net profits; the added necessity of computing an invested capital figure would further complicate the task.[54] It cannot be very profitable to discuss the latter point here, however, in the absence of a detailed study of the definition of net profits for such companies.[55]

59. Investment trusts buy, hold and sell securities as a business, and they, too, appear to have little or no claim to exemption from the excess profits tax, even though the securities are of companies that have already paid the tax. It is pointed out

[52] House Report No. 767, pp. 97-98; Senate Report No. 617, pp. 124-25; Montgomery, *op. cit.*, pp. 19-20, 512-47.

[53] Haig, *loc. cit.*, p. 30.

[54] *Ibid.*, pp. 41-42, 126-27, 223-25.

[55] See Josiah Stamp, *Taxation During the War*, pp. 179-86.

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below (No. 63) that a stockholder-rentier may in general be considered outside the field of an excess profits tax, since his income is impaired sufficiently at the source; but this remark does not apply to one who, buying and selling in an effort to take advantage of numerous kinds of economic changes, plays more than a rentier's rôle. The computation of income would have to take account of capital gains and losses if this more-than-rentier rôle of the investment trust were to be the object of taxation. However, the chances of an investment trust's getting an excess profit will be greatly lessened by the levy of an excess profits tax on the companies whose securities it holds. Moreover, if as a general rule stockholdings are to be excluded from invested capital, some difficulty might be encountered in defining investment trusts (where the opposite rule would govern).

60. Holding companies would not face this issue, in view of the infrequency of change in their assets. The receipt of dividends might occasionally give rise to an excess profit, where the company had obtained its holdings at a low price relative to current disbursements.

61. With farmers the problem is largely political and administrative. They were exempted from several of the World War excess profits taxes. The administrative problem is a real one, but a more logical approach might be through exemption of the small taxpayer, whether farmer or otherwise (No. 64 below). The exemption creates an administrative problem of its own in the attempt to define a "farmer".

At least one difficulty might be more acute than in the industrial and commercial field: would there not be many cases where the last sale of the farm had occurred so long ago that an invested capital figure starting with the price at that sale would seem high, or low, beyond the reasonable bounds of compromise (No. 24 above)? Possibly the compromise could be amended here to take the valuation at date of last transfer (for example, by inheritance, or gift), whether or not by sale.

62. The inclusion of professional men in an excess profits tax might be desirable if only for its possible repercussions on

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the definition of net income under the ordinary income tax, which has seriously neglected the capital element involved in the expenses of training (No. 4 above). A practical consideration to the contrary is the probability that most of those who would be affected during the early years of the tax would not have kept adequate records of those capital outlays.

Some difficulties arise in defining professional men. Is the criterion of personal qualification through admission tests to be employed, so that lawyers, doctors, architects and accountants will be taxed, and photographers, horse trainers and producing actors exempt? [56] A more relevant criterion would be the use of a substantial amount of capital, but here the line might be more difficult to draw without dispute.

63. As the term rentiers is used here, it includes individuals owning securities, real estate, personal property (other than short-lived property for personal consumption), royalty interests, etc. No reason appears for including the security owners, with the exceptions discussed above; for the others, the issue may be doubtful. Presumably the stockholder-rentier's income is impaired sufficiently by the excess profits tax collected from the business, and presumably the creditor-rentier's income, with rare exceptions, is not excessive. The other property owners, however, may be getting a money income, or the equivalent thereof in money saving, that is excessive compared to the invested capital—an income that is not reached by the excess profits tax at an earlier or later stage. Thus the owner of the equipment postulated in No. 35 above is getting an excess return on his $1,000,000 investment. If the renting of such equipment were part of a business, no special problem of inclusion or exclusion would arise; but often this is not so. The equipment may be a piece of land, and, unless the tax law is explicit on this point, the owner may be exempted by omission. Here the decision must be made whether the excess profits tax is indeed to cover, in principle, all excessive returns on capital, or merely that part that can be

[56] Haig, *loc. cit.*, pp. 27-29; Stamp, *op. cit.*, pp. 71-72.

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attributed to what is commonly called "business".[57] The tendency in Germany during the early years of the World War to favor a property-increment tax *(Vermögenszuwachssteuer)* along with an excess-business-income tax rested in part on the belief that otherwise an important amount of war-caused gain, especially in land, would escape under the currently accepted definitions of business and income.[58]

Scope of Tax:
Size or Constancy of Business

64. Any tax so general as an excess profits tax is likely to grant exemption to small taxpayers in fact if not in law, partly because of the small amounts of revenue that can be obtained for each dollar of cost from the small taxpayers and partly because, when such a tax is introduced, the sheer absolute increase in the size of the task is too great for the administrative organization to cope with until several years have elapsed. Exemption, in fact at least, would surely exist if the tax were to include unincorporated concerns. Administrative considerations alone, therefore, may well justify a legal exemption of small concerns. The most suitable measure of smallness would probably be absolute size of net income as computed for the ordinary income tax—suitable, that is, from an administrative point of view (in principle, there is no reason to exempt a huge corporation for the year in question merely because its absolute profit was small; a gross income test or asset test might be added to care for such cases). An alternative is to exempt a certain amount of excess profits, but this requires some elaborate computations in many cases where the former method would not.

65. Transitory businesses are apt to be small businesses; special provisions for dealing with transitory businesses as such would probably not be necessary.

[57] Thomas S. Adams, "Principles of Excess Profits Taxation", *Annals of the American Academy of Political and Social Science*, vol. LXXV, 1918, pp. 148-50; Montgomery, *op. cit.*, p. 15.

[58] Ludwig Buck, "Die Besteuerung der Kriegsgewinne", *Finanz-Archiv*, 1916 (vol. 33), pp. 2, 59 *et seq.* The German tax of 1916 used the property-increment base for individuals and the excess-income base for companies.

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66. Gains or profits that are "isolated, incidental, or so infrequent as not to constitute an occupation"[59] raise the question whether the tax is to be confined to "business" (but some "isolated" transactions may be said to be connected with a business, or at least made possible through business connections). If the isolated profit is obtained through the use of capital—for example, a flyer in the stock market—the general principles of the excess profits tax would seem to apply readily, though the fixing of a normal or fair return would be more than usually perplexing in such a case. Administrative difficulties suggest exemption.

Scope of Tax:
Monopoly Elements Already under Regulation

67. Public service corporations, whose rates and quality of service are controlled in some degree by the government, might be exempt from the excess profits tax, either on the ground that the regulating authorities were doing their work so well that no excess profits existed, or that they were doing it so badly that they would allow the corporations to try to pass any excess profits tax along to the customers. Actually, a middle ground seems more reasonable. The problem is not peculiar to the excess profits tax; it has created a good deal of discussion lately in connection with another tax that likewise is imposed in the expectation that it will rest on the entrepreneur or the owners (the income tax).[60] Aside from public service corporations, this issue, in the United States, has appeared chiefly with naval and aircraft government contracts, and certain maritime commission contracts. Profit limitations that had been applied to such contracts were repealed in 1940 when the excess profits law was passed. Most of the limitations, however, were in terms of per cent of contract price or cost, and failed to get to the heart of the excess profits problem.[61] A slightly

[59] Montgomery, *op. cit.*, pp. 15-16, 24.

[60] See the papers on taxing policies in the public utility field in *Proceedings of the Thirty-First Annual Conference* (1938), National Tax Association, pp. 235-76.

[61] See also Stamp, *op. cit.*, p. 218, and Adams, *Quarterly Journal of Economics, loc. cit.*, p. 367.

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different question is whether profits from government contracts in general should be taxed more heavily than other profits, as was done, to a certain extent, in the federal World War tax.

68. Profits from the use of patents and copyrights[62] seem in principle entitled to special treatment under an excess profits tax. The purpose of the patent or copyright is to assist the inventor or author to obtain a revenue above the competitive level; the legislator might be accused of inconsistency. But the administrative problem of segregating those profits from the rest of the concern's profits would almost surely be overwhelming in most cases. Further study might show that the difficulties could be overcome in enough cases to make an attempt at special treatment desirable.

Computation of Net Income: Capital Gains and Losses[63]

69. The only problems in the computation of net income to be discussed here are those of special concern to excess profits taxation; the others can be examined in analyses of the ordinary income tax.

The treatment to be given to capital gains and losses is a fundamental problem for the ordinary income tax, but the considerations applying for the excess profits tax are not quite the same. Consider, for example, the case of a business organized in the corporate form. Taxation of the corporation itself on gains that it makes from a sale of assets—anything from one asset to the business as a whole—is closely associated in principle with the policy adopted for the computation of invested capital, as noted above (Nos. 16, 27, 28). If a capital gain accrues to a corporation, it is usually because the prospect of income from the assets, considered either severally or in combination, has improved, as, for example, through a fortunate shift in market demand coupled with monopolistically competitive power. To tax both the present value of this im-

[62] Haig, *loc. cit.*, pp. 90-91; Senate Report No. 617, p. 126.

[63] Haig, *loc. cit.*, pp. 21-22, 69-73; Stamp, *op. cit.*, pp. 187-88, 195-96; A.E.A., "Report of the Committee on War Finance", pp. 129-30; Montgomery, *op. cit.*, pp. 80-83.

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provement in prospect and, later, the full amount of the increase in income as excessive (by disallowing inclusion of that present value in invested capital) is to create an inconsistency of a kind that does not apply equally to the ordinary income tax.

A closely related question is whether excess profits are to be penalized, not only by being shared with the government, but also by being given a zero statutory return allowance when they, or what is left of them, are invested. However, the difficulties of earmarking (for example, determining what part of a dividend that is reinvested consists of excess profits) probably justify putting this question aside for the time being.

70. A stockholder of the corporation in question may be accruing capital gains on his holdings. Some of these accruals may correspond to gains being experienced by the corporation; some may have little or no such correspondence, being, instead, due to speculative influences playing on the market for the stock as distinguished from the market for the corporation's assets. A realization of the accruals will in either case bear no necessary correspondence to a realization by the corporation of its gains. The basic principle here assumed for the excess profits tax (impersonal taxation of certain parts of unnecessary rewards to factors of production) gives no support to taxing the individual on the gains that simply correspond to those of the corporation. Presumably he, as a factor of production, has been indirectly taxed by the corporate tax as much as the legislator deems it wise; otherwise the rate of tax on the corporation would be raised (see No. 63 above). As to his other gains, the question is simply part of the broader one of whether the tax is to apply to all capital or only capital used in "business".

71. The partner or sole proprietor presumably accrues capital gains from his business only in the first sense noted in No. 70, that is, only as the business itself experiences gains. Hence there is no occasion to tax both him and his business on these gains, so far as the excess profits tax is concerned.

72. In any case, the degree to which capital gains (or losses) may be thought to bring no increase (or decrease) in

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real purchasing power, owing to changes in the price level, will probably influence the general treatment given to all capital gains and losses, if no techniques have been developed for isolating the general-price-level factor for tax purposes (No. 81 below).

Computation of Net Income: Inventories [64]

73. The valuing of inventories presents few problems peculiar to excess profits taxation, if the tax is designed to be relatively permanent and is not built on the principle of isolating each accounting period (see Nos. 79-80 below). The absence of these characteristics in the World War taxes and the sharp fluctuations in prices that occurred at that time made the problem an acute one; complaints were common that the tax was levied on paper profits that were wiped out when the post-war readjustment occurred. Since the present discussion is not concerned with a short-lived tax, the problems reflected by those complaints will not be analyzed here.

If the tax law provides no system of averaging the results of several accounting periods, the inventory method selected will have, in many industries, an important influence on the amount of tax payable, particularly if the tax rate is graduated. The influence will not be so great if there is allowed a carry-over of losses (defined as the amount by which net income—or net loss—falls short of statutory income), but it will still be important enough to make a choice among inventory methods significant.

74. As with the income tax, to discussions of which the reader may be referred for detailed analyses of the various inventory measures, some types of inventory valuation will greatly lessen the year-by-year fluctuations in net income. There is no one type that is most effective, from this point of view, for all industries. Generally, the last-in, first-out method will produce the greatest smoothing; here, the materials' cost assigned to any given unit of output is the cost of the materials last purchased by the concern. Thus materials' prices and sell-

[64] See Haig, *loc. cit.*, pp. 57-69, 227-29; Senate Report No. 617, p. 122; Stamp, *op. cit.*, pp. 196-206, 221-31.

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ing prices may fluctuate greatly without causing large fluctuations in profits, if their changes take place at about the same time and to the same extent. There are several variations of this method, but in general the statement just given holds for all of them. In some industries, a matching system will give the greatest smoothing; the cost of the particular materials bought on the basis of a particular order is assigned to the product resulting from that order. In still others, it is an averaging system; the materials' cost assigned to a given unit is the average of materials' cost over a certain past period. This list is not complete, but it indicates the complexity of the problem of using an inventory method to prevent the lumping of profits, in the absence of averaging devices or loss carry-overs.

In the excess profits tax a further factor is the extent to which each of the inventory methods affects the invested capital figure. After a rise in prices has gotten well under way, the last-in, first-out method, for example, normally tends to keep the invested capital figure lower than the first-in, first-out method (the recently acquired, high-cost materials are drained out). Thus it tends to counteract its own effect (working through the income statement) in lessening the tax due. The same result may occur in the first stages of a downturn. After the fall in prices is well under way, and for some time after an upturn, the last-in method normally tends to keep the invested capital figure higher than the first-in method (the recently acquired, low-cost materials are drained out). This would have no effect on the taxpayer with respect to the current period's operations alone if a sub-statutory return would be shown under this last-in method anyway, as would be likely in many instances; otherwise, it tends to counteract its own adverse effect (exercised through the income statement) on the taxpayer. The comparative results at various stages of the price cycle depend in part on the stage at which the last-in method is assumed to have been introduced, and the conclusions above are not universally valid.

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Computation of Net Income:
Miscellaneous Deductions

75. Excessive deduction on account of salaries is apt to be more damaging to the government under the excess profits tax than under the income tax. In the latter case, the amount deducted is includible in the recipient's individual gross income, although it may be covered by personal exemptions or deductions or may be taxed at a different rate. For a similar reason, it is more important, in the former tax than in the latter, that at least some deduction be allowed for salaries, imputed or actual, in partnerships and proprietorships. The test of reasonableness in a salary may well be more strict under an excess profits tax than under an income tax.[65]

76. If the tax is temporary, the taxpayer may find that it brings into the range of profitable expenditures certain outlays that are deductible in full before the tax expires but that continue to bring in gross revenue after that time—for example, institutional advertising, and sales to old customers at low prices.[66] A tax that is to continue indefinitely, however, gives no monetary inducement to increase expenditures (other than salaries or other payments to those in control), except for the postponement of tax.

77. Depreciation and obsolescence, like inventory valuation, raise no problems peculiar to the excess profits tax aside from their accompanying influence on invested capital, provided always that the tax is not a temporary one and does not isolate each accounting period. The "amortization" provisions of the Federal Revenue Act of 1918, which both reflected and caused so much difficulty, were necessitated largely by the temporary nature of the tax and of the war facilities that were being produced and operated at that time.

78. Unless the income tax law or the excess profits tax law makes some allowance for the amount paid under the other tax, it is possible that the two together will take more than

[65] For deduction of salaries under the World War taxes, see Adams, *Quarterly Journal of Economics, loc. cit.*, pp. 384-85; Haig, *loc. cit.*, pp. 43-44; A.E.A., "Report of the Committee on War Finance", pp. 21-22.

[66] Haig, *loc. cit.*, pp. 148-49.

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even the total net income, and, in any case, probably more than the legislator would want taken if the matter were called to his attention. Four possibilities come to mind: the income tax could be deducted from the excess profits tax otherwise due; the reverse deduction could be allowed; the income tax could be deducted in arriving at the excess profit; and the excess profits tax could be deducted in arriving at the income taxable under the income tax. If excess profits taxation is regarded as removing something that is not necessary to the maintenance of production, the income tax may perhaps be regarded as aimed at the remainder; under this view, the excess profits tax paid is deductible in computing net income subject to the ordinary income tax. The deduction of one tax directly from the other seems to have little to recommend it. This "tax-credit" method implies that the deductible tax performs the same function as, but in a better way than, the other tax, which is obviously not the case here.

Averaging and Carry-Overs [67]

79. The effects of a failure to allow an averaging of income (including negative income) of two or more years, or at least a carry-over of losses, and various possible techniques for averaging or carry-over have been examined in studies on the income tax, and the details need not be repeated here. Obviously, the discrimination against industries with fluctuating income can readily become severe—much more so under the excess profits tax than under the income tax, since excess profits fluctuate more than net income.

An averaging of profits would also involve an averaging of invested capital. The relation between the two would of course be a weighted average (comparison of absolute totals) and not an average of averages. To be very effective, the averaging process would have to cover several years, perhaps six or seven; if it were to differ from an income tax averaging period, it would presumably be longer.

[67] See Adams, *Quarterly Journal of Economics, loc. cit.*, pp. 382-83, 390; A.E.A., "Report of the Committee on War Finance", pp. 22-23; *Facing the Tax Problem*, p. 283; Haig, *loc. cit.*, pp. 39, 45-48.

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80. A carry-over of loss would have to be at least in the forward direction; a carry-back of loss, to offset the profit of a previous year, would be unnecessary in a permanent tax except in a few cases where an initial burst of good fortune was followed by apparently lasting deficits, or where a business was abandoned with a capital loss (No. 29). A carry-back would often necessitate refunds, but so extensive a use as that made by the British following the World War[68] would probably not be inherent in a permanent tax. The "loss" would in any case have to be defined as the extent by which the year's results fell short, not of zero net income, but "normal" net income.

Changes in the General Price Level

81. In a time of generally rising prices, the excess profits tax on particular firms may easily increase in dollars by a greater per cent (or make its appearance, for the given firm, more quickly) than any other tax. The excess profits tax is levied on a residual that has a high "leverage factor", in investment terminology. A slight percentage change for the better in dollar cost-price relations may bring a large percentage increase in profits. Invested capital will probably not, in practice, be marked up correspondingly without a long lag (if it is, the increase may be taxed as a capital gain).

On the other hand, it must be recalled that in such a period some firms' cost-price relations change for the worse, and their excess profits can diminish or disappear with corresponding speed.

These difficulties can be attacked piecemeal, as in the provisions for valuing inventories, but no general remedy seems yet to have been seriously considered. The problem, even if viewed only from the fiscal standpoint, is part of a much larger one that concerns all taxes, and is probably best set aside for

[68] Haig, *loc. cit.*, pp. 11-12, 38, 46-48; Stamp, *op. cit.*, pp. 193-94, 206-07, 217. Under its new excess profits tax, Great Britain follows the policy of "overriding . . . separate accounting periods in assessment. Liability is in fact re-assessed every year for the entire duration of the tax, and only net liability over the whole period to date is paid." U. K. Hicks, *The Taxation of Excess Profits in War-Time*, p. 8.

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consideration in a more general way, though the necessity of having an invested capital figure will always give it a special twist when the excess profits tax is reached.

Relief Provisions [69]

82. The acts governing the federal excess profits tax during the World War, especially the Revenue Act of 1918, contained extensive relief provisions. In general, they called for appeal to the experience of other taxpayers in the same line of business, and the fixing of the taxpayer's liability in accord with that experience. Extremes were thus converted into averages. Much of the need for these provisions can be laid to the haste with which the novel laws had to be drafted and administered, and to the temporary nature of the tax. Much, again, can probably be traced to the relatively high degree of isolation of accounting periods, and to the exclusion of borrowed capital.

83. In at least one instance, however, some provision of that nature is essential, namely, when it is impossible to determine the invested capital because adequate data are not available. The two techniques used in the Federal Revenue Acts of 1917 and 1918 will illustrate some ways in which appeal can be made to the experience of others. The 1917 law (Sec. 210) applied to the taxpayer's net income the proportion that the average deduction bore to the net income for the taxable year of "representative corporations, partnerships, or individuals, engaged in a like or similar trade or business." It is to be noted, first, that not all corporations, etc., in the like or similar trade or business were to be included in the comparison, only "representative" corporations, etc.; and, secondly, that the comparison was one of total net income to, not invested capital, but (roughly) statutory return ("average deduction"). The 1918 law (Secs. 327, 328) changed the basis of comparison to one of "average tax" (instead of "average deduction") to "average net [not excess] income (in excess of the specific exemption of $3,000)"; and it made more specific the con-

[69] See Adams, *Quarterly Journal of Economics, loc. cit.*, pp. 386-88; A.E.A., "Report of the Committee on War Finance", pp. 22-23; Haig, *loc. cit.*, pp. 17-18; Stamp, *op. cit.*, 75-79; Senate Report No. 617, p. 127.

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ception of a "representative corporation" by limiting it to those whose "invested capital can be satisfactorily determined" and which "are, as nearly as may be, similarly circumstanced with respect to [1] gross income, [2] net income, [3] profits per [a] unit of business transacted and [b] capital employed, [4] the [a] amount and [b] rate of [i] war profits or [ii] excess profits, and [5] all other relevant facts and circumstances."

84. The latter (1918) comparison was also used when a mixture of tangibles and intangibles had been paid for in stock or for stock and bonds, and allocation was impossible—a case of conflict between the assets-side approach and the liabilities-side approach (No. 45 above).

85. It was also used where the corporation would otherwise suffer "exceptional hardship", as evidenced by a "gross disproportion" of its tax-to-net-income ratio compared to the similar ratio of the representative corporations, provided this hardship was due to "abnormal conditions affecting the capital or income" of the corporation. This relief was not to be granted where the tax was high "merely because the corporation earned within the taxable year a high rate of profit upon a normal invested capital."

This application of the representative-corporation device obviously reflects serious faults in the formulation of basic principles for the tax or in the administration of it, or both. A belief has been expressed above that it was largely the former, and that the faults are remediable; but probably no greater benefit could be derived from the experience of the war-time tax than by a careful study of (1) the various issues that were in fact made the grounds for an appeal to this particular application of the representative-corporation procedure and (2) the extent to which each of these issues could probably be obviated by a reformulation of the general provisions of the tax.

86. The treatment of foreign concerns must always be somewhat arbitrary under an excess profits tax; here, too, the 1918 law required appeal to the representative-corporation experience.

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Tax Rate

87. The rate of the excess profits tax was in some laws graduated, in others, flat. In principle, there seems little basis for graduation; a given dollar either is or is not a necessary incentive for the kind and degree of economic endeavor that the tax is supposed not to lessen. In practice, in view of the difficulty of knowing where the dividing line is, it may be safer to raise a given revenue by a graduated rate structure that has, of course, a lower initial rate and a higher terminal rate than the flat rate that would raise the same revenue. It has been argued that a graduated rate "destroys in the most direct way possible the incentive to maximum efficiency which it is so essential to preserve in war time."[70] But it must be recalled that the alternative is a flat rate that starts at a higher level than would the graduated rate; may it not be possible that this factor would so lessen the desire for efficiency on the part of some firms (those not earning extremely excessive profits) as to offset the beneficial effect on other firms? Moreover, the last dollars of profit—those subject to the highest rates—may not be the result of "efficiency" of the kind desired in war time. Much depends, too, on the basis of the graduation. Is the rate to rise by blocks of absolute amount of net profit? of absolute amount of invested capital? of percentage of net profit to invested capital? of absolute amount of excess profit? of percentage of excess profit to invested capital? From the viewpoint of safety noted above, that is, not going below the dividing line with much severity, the last measure may be the best. But the whole question seems open to much more analysis than it has received.

Distortions of the Excess Profits Concept

88. Some curious distortions of the excess profits concept have been used in an effort to have something that can be called an excess profits tax but that will avoid the difficulties of measuring invested capital (or even merely changes in such capital). In the closing months of 1939, France imposed

[70] U. K. Hicks, *op. cit.*, p. 5.

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a war-profits tax that dispensed entirely with any specific reliance on the invested-capital standard. It substituted what may be called a profit-margin standard: the tax was levied on ordinary profits (with some special allowances) and the rate was steeply graduated in accordance with the percentage of profits to gross sales *(chiffre d'affaires)*. This kind of graduation is inappropriate, since some kinds of business naturally have a slow turnover of capital and hence must obtain a large margin of profits on sales in order to get a normal return on capital (for example, the steel industry) while others naturally have a rapid turnover (for example, grocery stores). To be sure, the French law provided, not one, but several scales of graduation—one for manufacturing, mining and wholesaling, another for brokers, agents and hirers *(loueurs de choses ou de services)*, and another for retailers, banks, insurance companies, and others. But the scales varied in just the opposite way from what speed-of-turnover might indicate. Thus the first group paid 25 per cent of that part of the profits that did not exceed 2 per cent of sales, 50 per cent of that part lying between 2 per cent and 6 per cent of sales, 75 per cent of that part lying between 6 per cent and 10 per cent of sales, and 100 per cent of all the rest of the profits. In contrast, the percentages for the retail group were: 25 on the first 8; 50 on the block between 8 and 12; 75 on the block between 12 and 20; and 100 on the rest. Although the invested-capital standard was formally ignored in this tax, the base period was not, for the law provided that the tax could not be so large as to reduce the taxpayer's profit below either (1) 75 per cent of the average of the annual profits for the three years preceding the outbreak of the war, or (2) a figure obtained by applying to the total sales of the taxable year the average percentage of profit to sales during those three years.[71]

In Italy during the World War of 1914-1918 it appears that

[71] Special provisions, along the same lines, governed concerns that did business with the government under certain conditions. For an analysis of the law and a reproduction of its text, see Maxime Chrétien, "La limitation des bénéfices", *Revue de Science et de Législation Financières*, Jan.–Feb.–March, 1940, vol. XXXVIII, No. 1, pp. 46-89.

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the principles enunciated by the law were disregarded in practice, at least at some times and places, to the extent that the judicial commissions *(commissioni giudicatrici)* first examined the profits and then somehow or other allowed an invested capital figure based on what they thought was "necessary" to earn those profits. As Einaudi remarks, "This is equivalent to saying that the war-profits tax is not a tax governed by norms of the laws or regulations but is completely arbitrary." [72]

The federal "declared value excess profits tax" is scarcely an example of the point at issue, since no one has pretended that it has had any real connection with excess profits; it is simply designed to allow the capital stock tax to be administered through valuations set by the taxpayer himself.

89. In view of the fact that there has hitherto been little analysis of excess profits taxation in general, as opposed to descriptions and critiques of particular excess profits taxes, the present article refrains from stating definite opinions as to whether and under which circumstances such a tax should be imposed, and, if it is to be imposed, precisely how it should be constructed in all its parts. The need at the moment seems to be for more discussion, not only of the technical issues analyzed above, but also of the major economic implications with respect to amount of revenue and effect on prices and production. Concerning the last point, it is clear that the traditional conclusions, based so largely on analyses in terms of the marginal firm, perfect or almost perfect competition, and absence of risk, must be carefully reëxamined. Many, perhaps most, of the taxpayers are buying and selling under conditions that in varying degrees fail to correspond to those assumptions. The tax itself may in various ways strike more than simply the excess of reward needed to keep the firm at the level of production it would otherwise maintain, to say nothing of its more indirect effects.[73]

[72] Einaudi, *La guerra e il sistema tributario italiano*, p. 150.

[73] Thus it can be shown that if the tax alters the function relating given amounts of profit to various degrees of probability, some influence on price and output may be expected. Duncan Black, *The Incidence of Income Tax* (London, 1939), pp. 54-55.

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90. This article was written and submitted before the Second Revenue Act of 1940, imposing an excess profits tax, was enacted. A brief description of this tax is added here, but no extended comment will be attempted.

The tax is designed primarily to reach profits that are due to the defense program, and there is no indication at present that it will be a permanent part of the federal tax system. It is restricted to business corporations. Both the base-period standard and the invested-capital standard are used, but the option is in favor of the taxpayer, not the government. Thus the profit, to be taxable, must be not only in excess of 8 per cent of the invested capital, but also in excess of the base-period standard, no matter how high that standard may be. Consequently the tax as it stands cannot compare in importance with the excess profits taxes of 1917-21, at least with respect to revenue. No allowance is made for differences in risk; a step in this direction in one of the earlier drafts, namely, the granting of a higher percentage return to small concerns, was eliminated for fear of loopholes that it might offer to large corporations that could split themselves into two or more smaller corporations.

The computation of invested capital for the first year follows in the main the compromise described in Nos. 21-23. For subsequent years, the price paid by a new corporation for the assets of an existing corporation is, in general, the invested capital of the new corporation, although capital gains and losses are ignored in computing excess profits net income, if the asset has been held more than eighteen months. A departure from the traditional conception of invested capital is found in the inclusion of 50 per cent of borrowed capital evidenced by a bond, note, bill of exchange, debenture, certificate of indebtedness, mortgage, or deed of trust. The 50 per cent limitation and the exclusion of open book accounts were induced primarily by a fear that corporations could too easily expand their borrowed capital with the sole purpose of avoiding the tax. Correspondingly, deduction is denied to one-half the interest paid out on such included borrowed capital. Rented or leased assets, however, are not included. No dis-

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tinction is made between business assets and non-business assets as such, but corporate stocks and tax-exempt securities are excluded ("inadmissible assets") and the income therefrom is correspondingly excluded. The limitations on the inclusion of "intangibles" that were found in the earlier taxes are absent.

Corporations with an excess profits net income not in excess of $5,000 are exempt.

No special provisions are made with respect to monopoly elements already under regulation. Although the Act suspended the profit-limiting provisions of the Vinson Act (applying to contracts and subcontracts for naval vessels or Army or Navy aircraft) and of certain sections of the Merchant Marine Act of 1936, the excess profits tax contains no special provisions for profits on government contracts. Hence a corporation may make a high rate of profit on that part of its capital devoted to meeting government contracts, yet escape tax if the rest of its business pulls the average rate of return below the statutory percentage, or pulls the absolute amount below the level set by the base-period method. The cost of "emergency facilities" certified as necessary for national defense (whether or not used directly in connection with a government contract) may be written off over a five-year period (with qualifications) instead of having to be spread over a longer period under the ordinary provisions for depreciation and obsolescence.

The ordinary federal income tax paid is deducted in arriving at income subject to the excess profits tax.

No averaging of income over two or more years is permitted, but there is allowed a carry-over, not only of actual loss, but also (under the "relief" provisions enacted March 7, 1941) of the amount by which the profit falls short of the normal profit. Such a loss or profit deficiency can be carried forward to apply to the income of the two succeeding years.

No provision is made with respect to a possible change in the price level.

There are several relief provisions, too complex to be summarized here; however, reliance on comparison with "repre-

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sentative corporations", characteristic of the earlier excess profits tax, is avoided.

The tax rate is graduated in accordance with the absolute amount of income subject to the tax. This kind of graduation was deemed necessary in view of the option given to the taxpayer to use the base-period method, which does not involve a computation of invested capital. The rate increases rapidly: 25 per cent on the first $20,000, with increases of five percentage points at the levels $30,000, $50,000, $150,000, $250,000, to 50 per cent on that part in excess of $500,000.

In addition there are many special provisions concerning issues not developed in the present article, especially in the use of the base-period method.

In general, the present excess profits tax is liberal with respect to corporations that had reached a high degree of maturity by 1940, but it promises to weigh heavily on new corporations and, in some cases, on the expansion of existing corporations. More specifically, it may be said that the provisions for computing base-period income are generous, at least as judged by the standard set by former excess profits taxes, while the use of an 8 per cent rate under the invested capital option, the refusal to allow for variations in risk, and the steepness of the rate graduation impose severe burdens on new firms.

If an attempt is to be made to raise more revenue from the tax, a policy of not deterring production would point away from an increase in the present rates and toward a greater insistence on the use of the invested-capital method (using the base-period method only as an option in favor of the government, with adequate safeguards for the taxpayer), coupled with some increase in the percentage that is allowed as a standard return.

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CARL SHOUP

COLUMBIA UNIVERSITY

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EXPERIMENT IN TARIFF-MAKING: CZECHOSLOVAKIA

THE peace treaties of the last war often have been listed among the "causes" of the present conflict. The Czech experiment in tariff-making illustrates the post-war experience of a small Central European state created from the dismembered Austro-Hungarian Empire. It also indicates an important economic aspect of the recent events preliminary to the end of Czech independence and the outbreak of another war.

The tariff was an instrument of great significance in the economic development of the Czechoslovak Republic. Foreign trade was vital to the nation's economic life; and until 1932 it was controlled mainly by the tariff. After 1932 the tariff was no longer the chief form of control, but it remained important. The purpose of the present paper is to examine the principal features of Czechoslovak tariff legislation and commercial policy, the economic conditions affecting them, and the connection between Czech tariff-making and the country's loss of independence.

I

A provisional system for the strict control of all imports and exports was set up on the day of Czechoslovak independence, October 28, 1918. This control of exports and imports became effective through a system of permits, which were issued by the Czechoslovak Import and Export Commission created by an ordinance of the Ministry of Commerce on November 22, 1918. The Commission prevented the export of foodstuffs, raw materials and certain other commodities unless a sufficient supply at reasonable prices was available for domestic consumption. Imports also were regulated strictly. Luxuries and goods obtainable in the domestic market could

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not be imported, for the control of foreign trade was used to protect the currency. In connection with the Import and Export Commission a Central Exchange Bureau was created. Foreign exchange from goods sold abroad had to be surrendered to it. The Bureau then reassigned this exchange for the purchase of raw materials, foodstuffs or other commodities for which import permits were issued.[1]

The organization of Czechoslovakia as an independent customs territory was accomplished early in 1919, but the Austro-Hungarian autonomous tariff of 1906 was taken over with modifications to meet the needs of the new situation.[2] The first Czechoslovak customs tariff, a provisional one, went into effect on July 20, 1919.[3] A comparison of a few duties of the Czech customs tariff in effect on January 21, 1920 with the Austro-Hungarian autonomous rates of 1906 is given in Table I.

TABLE I*

AUSTRO-HUNGARIAN CUSTOMS DUTIES IN 1906, AND CZECHOSLOVAK DUTIES IN 1920, 1921, 1922 AND 1923

Classification	Austria-Hungary Autonomous Duties 1906	Czechoslovak Duties Actual Amount in Gold Crowns				
		Jan. 21, 1920	June 1, 1921	Jan. 1, 1922	Aug.-Oct. 1922	1923
Meat	30.0	free	free	6.32	15.40	14.10
Foodstuffs	40.0	free	free	19.68	47.90	43.90
Mineral oils	11.0	0.74	2.50	2.32	5.64	5.17
Cotton yarns	14.0	2.80	7.45	17.72	43.08	39.50
Cotton goods	110.0	21.95	56.43	154.65	376.20	344.85
Cotton ribbons	226.0	45.08	120.23	310.15	772.90	708.50
Hempen yarn (raw)	3.6	0.71	1.90	5.11	12.30	11.24
Jute yarns, bleached	12.0	2.40	6.38	16.87	41.04	37.62
Silk tissues	1,300.0	259.35	691.60	1,827.80	4,446.00	4,075.50
Footwear	145.0	30.85	110.20	256.60	624.15	572.14
Porcelain	36.0	7.65	27.36	37.96	92.34	84.65
Iron-wire	12.5	0.82	2.85	10.54	25.65	23.50
Hardware	65.0	12.96	34.58	91.40	222.30	203.77
Writing paper	36.0	7.18	19.15	25.30	——	——

* V. Herrmann, *Die čechoslovakische Handelspolitik* (Prague, 1927), pp. 82, 85, 91, 95.

[1] F. Peroutka, "The Commercial Policy and the Tariff", in *Czechoslovakia*, edited by J. Gruber (New York, 1924), pp. 127-129.

[2] *Ibid.*

[3] *Board of Trade Journal*, May 27, 1920, p. 718.

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There were several revisions of the rates of the Czechoslovak autonomous tariff during 1920 and 1921, the most important of which introduced modifications in the method of assessing customs duties to be effective from June 1, 1921.[4] A new tariff act, protecting Czechoslovak industry against the competition of Germany and other states with depreciated currencies, went into effect January 1, 1922, by virtue of a governmental order of December 19, 1921. The basic rates of the 1919 tariff act were increased to the extent necessary to offset the advantages gained by the states with depreciated currencies. In general, raw materials and the necessities of life were duty free or at low rates, while competitive merchandise and luxuries were subject to high rates;[5] but a proclamation of September 9, 1922 provided for future reductions. The rates of 1921, 1923 and those of August-October 1922 are given in Table I. With these reductions Czechoslovakia became one of the first states to turn away from the general trend toward higher tariff rates.[6]

The tariff was not generally raised between 1922 and 1927, although the pre-war duties on agricultural goods were restored, and in 1926 increased duties were levied on a few manufactured goods previously admitted duty free or at very low rates. Tariff rates were appreciably lowered, however, by a number of commercial conventions entered into after 1923. Of 657 tariff items, 361 were included in commercial treaties, which lowered more than 25 per cent of the rates on industrial goods.[7]

Czechoslovakia's commercial relations with other countries developed into an extensive system of conventions, based on the most favored nation principle. The earliest arrangements were merely quota agreements, which were soon superseded by treaties regulating general commercial relations on a most favored nation basis. In 1920, conventions were signed with

[4] *Board of Trade Journal*, Aug. 18, 1921, p. 188.

[5] *Commerce Reports* (U. S. A), March 13, 1922, p. 648.

[6] Peroutka, *loc. cit.*, pp. 136-137.

[7] Publications of the League of Nations, *Economic and Financial*, 1927, II-31(d), p. 8.

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Yugoslavia, Germany and Switzerland; in 1921 with France and Roumania; and in 1922 with Italy, Austria and Spain. During 1923-1926 commercial treaties, with customs tariffs attached providing specific changes in the rates of duties, were concluded with France, Italy, Austria, Poland, Belgium, Greece, Spain, Switzerland and Finland (1927).[8]

II

Because of the shortage of agricultural produce after the World War, Czechslovakia refrained from levying import duties on the majority of such goods. Some of the former duties were restored in May 1921, but many agricultural products, including grain and milled products, remained duty free. After the War an agricultural crisis developed, which persisted as prices of agricultural products continued to decline. In Czechoslovakia this situation was aggravated by free imports of grain and flour, and especially by the absence of duties on milled products. The Czechoslovak mills were capable of handling the entire yield of domestic grain as well as any necessary imports. But in the year 1923-1924, out of a total of 11,601 flour mills, 1,380 were completely closed and the remainder were operating at 28 per cent of capacity. The question of agricultural duties came to the fore, agrarian interests demanding that they, as well as the industrialists, be protected.[9] Settlement of the question was a necessary preliminary to the negotiation of commercial treaties, particularly with Hungary and other agrarian countries.[10]

The first attempt at a solution was a decree of June 4, 1925, which introduced two kinds of duties for agricultural goods. Some agricultural and kindred products could be imported at the rates formerly applicable to such products under the old Austro-Hungarian customs tariff, expressed in Czech kronen and multiplied by a coefficient of six. On certain other imports the rates were reduced according to a sliding scale, so

[8] *Ibid.*

[9] Z. Fafl, "The New Customs Duties on Agricultural Produce I", in *The Central European Observer*, June 18, 1926, p. 423.

[10] *Ibid.*

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that duties would become effective only when the prices of these articles fell below a fixed minimum.[11] But the new duties were not very successful. It was difficult to adjust the sliding-scale rates to price movements in the world market, while the difference between the duties on grain and those on flour was insufficient to prevent a disproportionately large import of flour.[12]

The question of agricultural duties led to a most vigorous and heated political campaign in 1926, causing a break-up of the coalition cabinet of bourgeois and socialist groups under M. Sevehla, and bringing about a unique, if temporary, division of Parliament. Deeming the sliding-scale duties to be totally ineffective, the agrarian interests demanded the imposition of fixed duties. In opposition to them were the Socialists and other parties representing the interests of consumers.[13] The division in Parliament was on a basis of class or occupational interest; thus the conflict was purely economic. Racial and political differences did not enter the controversy; for not only were the Czech Agrarians, the strongest party in the country, lined up in favor of the duties, but so also were the German and Magyar bourgeois parties, making for a totally new situation in Parliament.[14]

Two measures for changing the duties were submitted to Parliament. The Donat Bill to readjust corn duties came before the Czechoslovak Senate on April 21, 1926. The Bill was passed by the Senate; but in the meantime a new measure was submitted to the Chamber of Deputies, May 27, and it was passed the next month with a majority of 40. The Communists, Czech and German, and the Social Democrats sought to hinder the passage of the measure by violent scenes of obstruction in the Chamber of Deputies and by demonstrations outside.[15]

[11] *Board of Trade Journal*, June 6, 1925, p. 699.

[12] Fafl, *loc. cit.*, p. 423.

[13] *Central European Observer*, April 4, 1926, p. 265.

[14] *Ibid.*, May 7, 1926, p. 313.

[15] *Ibid.*, 1926: June 25, p. 439; June 18, p. 421.

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In addition to the internal pressure groups there was a foreign factor. An unusual step was taken by the Hungarian government, while final debate on the measure was going on in the Czechoslovak Parliament, when it intimated through diplomatic channels that the passing of the measure would be regarded in Hungary as frustrating in advance any plans for the negotiation of a commercial treaty.[16]

The law passed by Parliament on June 22, 1926 settled the problem of agricultural duties and also revised duties on some manufactured goods. Article I provided new autonomous duties for agricultural products and for several industrial manufactures. Duties of uniform fixed amount replaced the former system of basic tariffs and coefficients. An attempt was made to graduate the tariff protection on individual items in accord with the actual need in each case. Article II reduced the duties established by Article I, empowering the government to apply the lowered duties exclusively to imports from such countries as had commercial treaties with Czechoslovakia, or which did not discriminate against Czechoslovak goods. Thus a twofold tariff was enacted, an autonomous or general tariff and a treaty or minimum tariff applicable to countries having commercial treaties with Czechoslovakia. Article VI provided for a system of import vouchers for grain (except barley and malt), pulse and rice, satisfying the desires of agricultural circles and the flour-milling industry.[17] A comparison of the autonomous or general duties with the treaty or minimum duties is given in Table II.

The country particularly affected by the new duties was Hungary. Czechoslovakia's Minister at Vienna, M. Vavrecka, pointed out that Hungary's agricultural duties were higher than those just levied by his country, and that Hungarian duties on manufactured goods, compared with pre-war rates, were both absolutely and relatively higher than Czechoslovak grain and flour duties. Because of Hungary's high duties on manufactured goods Czech exports to Hungary were but 20 per

[16] *Ibid.*, June 18, 1926, p. 421.

[17] *Ibid.*, June 25, 1926, p. 439.

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TABLE II*

CZECHOSLOVAK AUTONOMOUS AND MINIMUM DUTIES, 1926

Tariff Number	Autonomous Duties	Minimum Duties
	Kc. per 100 kg.	Kc. per 100 kg.
23 Wheat	60.0	30.0
24 Rye	56.0	38.0
25 Barley	44.0	34.0
26 Oats	48.0	36.0
27 Maize	32.0	18.0
30 Malt	59.0	45.0
33 Meal and meal products	120.0	70.0
34 Rice	36.0	5.40–8.10
63 Oxen, per head	480.0	360.0
64 Bulls, " "	300.0	240.0
65 Cows, " "	300.0	210.0
66 Young cattle, per head	180.0	126.0
67 Calves " "	50.0	40.0
88 Natural butter	350.0	210.0
89 Hog's fat	360.0	150.0
90 Artificial butter	210.0	105.0
117a Fresh meat	240.0	165.0

*V. Herrmann, *Die čechoslovakische Handelspolitik*, p. 112.

cent of their pre-war level. But Hungary, so long as there were no Czechoslovak agrarian duties, or only low ones at most, continued to export to Czechoslovakia the same quantity of wheat and flour as before the War.[18] Under the new Czech duties, however, preference for Hungarian agricultural goods in the Czech market could be obtained only by giving preference to Czech industrial products. This line of action was very distasteful to Hungarian industrial circles, particularly to the textile industry, which feared some reduction of its protective duties in any commercial treaty with Czechoslovakia.[19]

Hungary, ignoring its earlier stand, renewed negotiations at Prague on July 31, 1926.[20] But it was not until May 31, 1927 that the negotiations were finally concluded, the commercial treaty being ratified on July 24 and going into effect on

[18] *Central European Observer*, July 2, 1926, p. 474.

[19] *Ibid.*, Aug. 13, 1926, p. 575.

[20] *Ibid.*

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August 8. It was based on the most favored nation clause, and provided reciprocal concessions for Hungarian agricultural and food products in Czechoslovakia, and for Czechoslovak textile products in Hungary, as well as reduced rates on other items.[21] For Czechoslovakia the treaty was significant because it was the first tariff treaty on a considerable scale—over 900 tariff items were dealt with—based on the new duties of 1926. It was felt that a firm basis had now been fixed for favorable development of commercial relations between the two states.[22]

The end of the contest over agricultural protection cleared the way for a new customs law in conjunction with the new tariff. The law was promulgated on July 14, 1927, to become effective January 1, 1928; it was to replace the old Austrian law of 1906, which with various modifications was still in use.[23] The new tariff of 1927 remained the basic one during the rest of the country's independence, being revised in 1930 and 1933 in order to meet the exigencies of the changing economic situation.[24]

During 1927-1929 numerous modifications of the conventional tariff rates resulted from the conclusion of commercial treaties with various countries.[25] In this period there was also a relaxation of the main foreign exchange restrictions in Czechoslovakia.[26]

III

The first effects of the world depression which began in 1929-1930 were less severe in Czechoslovakia than in other nations. It was the government's purpose to maintain its industries' competitive position in the world market while conserving and strengthening its agriculture. Efforts were now

[21] *Commerce Reports*, 1927: Aug. 8, p. 375; Aug. 15, p. 437.

[22] *Central European Observer*, June 17, 1927, p. 403.

[23] *Commerce Reports*, Dec. 26, 1927, p. 80.

[24] S. Busch, *Exportdepression und Exportforderung in der Tschechoslovakei* (Bern, 1937), p. 28.

[25] *Board of Trade Journal*, Jan. 5, 1928, p. 4; Jan. 3, 1929, p. 4; Jan. 2, 1930, p. 5.

[26] *Commerce Reports*, Feb. 18, 1929, pp. 413-414.

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turned toward making the country relatively independent of foreign supplies of staple commodities. But a policy of this sort was not relished by the nations southeast of Czechoslovakia, since their exports of agricultural produce and livestock would thus be drastically curtailed. Nor should it be overlooked that these states, despite their attempts to develop their own industries, still remained important markets for Czech manufactured goods, particularly for textiles, machinery and leather goods.[27]

During 1930 agrarian interests again played a dominant rôle in Czechoslovak politics, for the drop in the prices of cereals on the world market led to a generally depressed state of agriculture, which was followed by numerous measures to aid the farmers. The first was an increase of agricultural duties in a law of June 5, empowering the government to introduce supplementary duties on certain classes of grain, flour, meal and milling products. These duties were to be fixed according to the price movements of the various commodities.[28] Further increases of rates appeared in an act of June 13.[29] On November 7, 1930 comprehensive milling regulations were established. The mixing of home-grown wheat flour, in the ratio of not less than 75 per cent home-produced flour to not more than 25 per cent foreign flour, was made compulsory. In the case of rye the proportion was set at 95 per cent home-grown and 5 per cent foreign.[30]

For Czechoslovakia to increase its duties on agricultural products it was necessary that the 1927 commercial treaty with Hungary be revised. But efforts to arrive at a *modus vivendi* failed, and the treaty expired December 15, 1930. Negotiations for revision during January 1931 also failed, because Czechoslovakia refused to modify its milling regulations. The introduction of compulsory flour-mixing, while not prohibiting the importation of wheat, had the effect of a forced limitation.

[27] Great Britain, Dept. of Overseas Trade, *Economic Conditions in Czechoslovakia, 1931*, pp. 9-10.

[28] *Board of Trade Journal*, July 10, 1930, p. 48.

[29] *Ibid.*, July 17, 1930, p. 74.

[30] *Ibid.*, Dec. 4, 1930, p. 668.

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Besides affecting imports from Hungary, it greatly curtailed imports of Canadian and American wheat.[31]

A tariff war with Hungary followed the expiration of the commercial treaty. Each country levied duties on the other which were much higher than those in effect under the treaty. The Czechoslovak Agrarians refused to make any compromise, whereupon Hungary retaliated by decreeing that henceforth, except by special permission, certain manufactured goods, including shoes, textiles and woolens, could not be imported from countries with which Hungary had no trade agreement. In return Czechoslovakia made Hungary suffer severely by boycotting its wheat.[32] As a result of this tariff war Hungary turned toward Austria, Germany and Italy for closer economic relations, while Czechoslovakia drew closer to Yugoslavia.[33]

The economic crisis led to a change in the nature of the Little Entente. Up to 1927 it had been mainly political. Intensification of Central European economic problems led to the realization that adverse economic conditions were being used by individual Central European states and by some Great Powers to foster revisionist movements. In 1930 a firmer political organization of the Little Entente was achieved, but a new economic unity to complement the political organization was needed. The economic problem arose out of the agrarian interests of Roumania and Yugoslavia as opposed to the agrarian and industrial interests of Czechoslovakia.[34] During 1930 the members were at odds, economically if not politically, and when their delegates met at the Bucharest Conference in May 1931, the situation was grave.[35]

The Conference, although secret, was said to have witnessed a great clash of interests between Czechoslovakia and its two allies. Czech industrial groups were opposed to the agricul-

[31] *Economic Conditions in Czechoslovakia, 1931*, pp. 31-32.

[32] F. J. Vondracek, *The Foreign Policy of Czechoslovakia, 1918-1935* (New York, 1937), pp. 328-329.

[33] *Ibid.*, p. 329.

[34] G. Schacher, *Central Europe and the Western World* (London, 1936), pp. 28-30.

[35] Vondracek, *op. cit.*, pp. 321, 323.

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tural interests of Roumania and Yugoslavia. With a well-developed agricultural system of its own, Czechoslovakia could not take much agricultural produce from the other two countries, and they, in turn, wished to protect themselves against becoming a dumping ground for Czech industrial products. In these circumstances Roumania and Yugoslavia were not alarmed at the projected Austro-German Customs Union, even seeing an advantage to be gained from it, since they expected that tariffs against their agricultural goods would be abolished and that trade would flow both ways more advantageously than it would with Czechoslovakia. Nor did the two states fear the *Anschluss* that might follow the Customs Union, since they believed "their strength and geographical position were such . . . that the economic advantages far outweighed any remote political dangers that might result." [36]

The Conference closed on May 6, 1931, with the following results. A resolution hostile to the threatened Austro-German Customs Union apparently was passed,[37] as well as other resolutions urging Czechoslovakia to forego the collection of duties on Roumanian and Yugoslavian agricultural products in return for preferential duties on Czechoslovak manufactured goods. Thus Czechoslovakia won out, political considerations being given preference over economic ones; and Roumania and Yugoslavia consented to the preservation of the status quo, politically and economically. But the crisis had been the most severe one in the history of the Little Entente, and the triumph of Czechoslovakia was very largely due to the "unstinted" support of France and the personal influence of Benes.[38]

IV

Economic activity followed a downward course during 1930 and the early months of 1931 in Czechoslovakia. As a result, government decree No. 152 was promulgated on October 2, 1931, putting into force decree No. 46 of the year 1924, reintroducing a controlled system of exchange. It was necessary,

[36] *Ibid.*, pp. 323-324.

[37] See *The New York Times*, May 6, 1931.

[38] Vondracek, *op. cit.*, pp. 323, 325.

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however, to supplement this decree with other measures. Government decree No. 179 of the year 1931 became the legal basis of all later international agreements for the settlement of payments. It gave the National Bank of Czechoslovakia, if authorized by the Ministry of Finance, the power to prohibit, wholly or partially, transfers of payments to countries which had restricted transfers to Czechoslovakia.[39]

In January 1932, Czechoslovakia introduced a system of import restrictions. Importers of specified goods were required to secure permits from a special government commission before they could purchase foreign exchange from the National Bank.[40] Tariff changes during 1932 were few. By a government decree of December 1932, import duties were increased on forty-four tariff items; the advance was said to be for the purpose of increasing government revenues.[41] By 1932 the tariff no longer played a leading rôle in regulating Czech imports. But the change had not been sudden, for it had started before the world economic crisis. In 1926 an elaborate import license system had been instituted for the corn trade. In 1930, compulsory milling regulations had been established, and a license system for imports of cereal, meat and dairy products made it possible to prevent their importation without modifying the tariff. The import permit system of 1932 and the placing of the grain and flour trade completely under the jurisdiction of an importing syndicate completed the process.[42]

The executive branch of the government was given wide and ill-defined powers over the tariff by the Czech Parliament on June 9, 1933. The Act authorized the government "for the duration of the extraordinary economic situation, but not longer than until November 15, 1933," to alter import duties by decree, and, within constitutional limits and except for measures relating to the monetary system, to issue such orders as were

[39] "Exchange Control in Czechoslovakia", in *Ten Years of the National Bank of Czechoslovakia* (Prague, 1936), pp. 154-155.

[40] *Commerce Reports*, Feb. 1, 1932, p. 263.

[41] *Ibid.*, Jan. 28, 1933, p. 60.

[42] H. Liepmann, *Tariff Levels and the Economic Unity of Europe* (London, 1938), pp. 83-84.

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deemed necessary adequately to regulate prices. Decrees under this law had to be countersigned by the Czechoslovak President and submitted to Parliament. Any regulation became invalid if both houses of Parliament disapproved it.[43] A decree of June 10, 1933 revised the Czechoslovak tariff schedule. Increased import duties were established and a new tariff law enacted, setting minimum rates for commercial treaties.[44]

The Act of June 9, 1933 was prolonged by a law passed on June 21, 1934, effective July 1, and to last until June 30, 1935. The new Act gave the government absolute power during the economic crisis to legislate (on such matters as import duties and control of prices) by decree; it went further than the previous Act by providing that these decrees were to have the force of law even in cases where they amended or changed laws which expressly required an act of Parliament for such changes or amendments. Only measures relating to the national currency or taxes still required parliamentary approval in order to become valid.[45]

V

The tariff policy, throughout the period of Czechoslovak independence has been aptly described as "a more or less unsystematic protection of producers."[46] Nor was it very difficult for these producers, industrial and agricultural, to secure tariff protection. The Agrarian party, as the largest single party in Parliament, was able to have its tariff demands carried out. On the other hand, the industrial interests, highly concentrated in the banks and in a few monopolized or cartelized industries, were able to secure protection without the necessity of gaining party support.[47] Within the two main groups of agricultural and industrial interests, however, there were subgroups which would have gained more from a policy of preference abroad

[43] *Commerce Reports*, July 15, 1933, pp. 42-43.

[44] *Ibid.*, June 24, 1933, pp. 394-395.

[45] *Ibid.*, Aug. 25, 1934, p. 125.

[46] D. Warriner, "Czechoslovakia and Central European Tariffs II", in *The Slavonic Review*, vol. XI, No. 33, p. 543.

[47] *Ibid.*, I, vol. XI, No. 32, p. 325.

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than from protection at home. For in agriculture, although corn and meat producers required protection, barley and hop growers required preferences in order to increase their exports. In industry iron and steel producers required protection, but textile producers needed preferences.[48]

Table III compares duties on important agrarian commodities, semi-manufactured goods and industrial finished goods for 1927 and 1931, as well as the duties in 1913 under the Habsburg Empire. In 1931 the tariff protection of agrarian commodities was "extreme", and there were also the other protective devices already mentioned. The Czech duties on industrial goods in 1931 exceeded those of all industrial countries of Europe excepting Italy. Other devices such as strict exchange control and import licenses were likewise used on industrial as well as agricultural imports, so that the tariff rates did not indicate the full extent of Czechoslovakia's protection.[49]

The Acts of 1933 and 1934 changed the basis of Czechoslovakia's tariff policy toward foreign countries. From the beginning of its independence, the nation had used a general-conventional tariff with conventional rates not granted unless required by most favored nation obligations. In time the conventional schedule became based on numerous tariff treaties of wide scope. In many of its most favored nation agreements Czechoslovakia excepted advantages granted to Austria and Hungary; specific commodities have also been excepted, representing "negative-most-favored-nation commodity lists", in agreements with countries following this practice. But under the above acts the executive branch of the government apparently had the power to generalize treaty rates to non-treaty countries unless the rates were rejected by both houses of Parliament.[50]

[48] *Ibid.*, II, vol. XI, No. 33, pp. 545-546.

[49] Liepmann, *op. cit.*, pp. 83, 146.

[50] U. S. Tariff Commission, *Extent of Equal Tariff Treatment in Foreign Countries*, No. 119, Series 2, 1937, p. 74.

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TABLE III *

CZECHOSLOVAK DUTIES, 1927-1931, IN PER CENT OF PRICES

	1913 **	*1927*	*1931*
IMPORTANT AGRARIAN COMMODITIES			
Wheat	36.8	16.5	89.5
Rye	34.8	20.5	104.0
Wheat flour	57.0	25.0	127.0
Pigs	2.5–37.0	2.7–10.2	15.1–87.0
Fresh pork	33.0	14.8–24.8	102.0
Cauliflower	Duty Free	21.6	40.0
Raw sugar	21.5	133.0	366.0
Tobacco	91.5	228.0	340.0
IMPORTANT SEMI-MANUFACTURED GOODS			
Raw cotton yarn	3.6–8.5	4.9–11.6	6.9–162.0
Raw artificial silk yarn	Tax Free	14.8	22.5
Bleached cotton tissues, to 500 gr.	7.1–24.7	10.5–42.0	14.0–56.0
Woolen tissues	18.0–26.0	17.6–33.0	17.1–30.0
Cellulose	35.0	39.0	35.0
Cast iron	19.2	16.0	17.0
Rolled iron	51.0	46.5	53.0
Iron sheets	51.0–60.0	46.0–46.5	54.5–67.0
Sulphurated ammonia	Tax Free	13.0	80.0
Ammonia sulphur	11.0	13.1	68.0
IMPORTANT INDUSTRIAL FINISHED GOODS			
Cotton stockings	16.5–26.0	21.4–41.5	26.0–51.0
Cotton garments	13.6–35.0	18.0–80.0	18.1–55.0
Woolen stockings	17.3–25.0	31.0–39.4	37.0–47.0
Artificial silk stockings	18.4	90.0	128.0
Printing paper	27.0–36.0	34.0	43.5
Sheet glass	45.0–135.0	21.8–72.0	20.4–67.0
Sewing machines	5.4	35.0	36.0
Metal-working machines	16.3–20.0	51.0	52.0
Private motor-cars	17.7	47.0–67.0	43.0
Radio apparatus	17.2–28.5	57.0	70.5
Motor tires	10.0	20.7–27.6	20.0–44.5

* H. Liepmann, *Tariff Levels and the Economic Unity of Europe*, pp. 84, 144, 145.

** 1913: Austria-Hungary.

Decree No. 28, issued by the Czechoslovak government on February 23, 1934, stated the matter precisely in Article I:

> For goods originating in countries with which Czechoslovakia has no commercial treaty including provisions relative to the treatment of goods within its customs territory, the Minister of

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> Finance, in agreement with the Ministers of Foreign Affairs, Commerce, and Agriculture, may grant customs reductions up to the full amount of the differences between the generally valid customs rates and the treaty rates valid at present, if thereby are rendered possible exports of Czechoslovak goods into the respective countries in at least an equal amount, or if other important advantages may result to Czechoslovakia's national economy.[51]

The introduction of foreign exchange control by Czechoslovakia in 1931, however, had already decreased the significance of its equal application of import duties. Import and foreign exchange permits were now required for long and comprehensive lists of commodities. In general, the issuance of permits was based on arbitrary quotas, usually not made public, fixed periodically by government officials. In some instances, quotas were granted to certain countries in unpublished special agreements at such high levels that they involved abnormal curtailment of imports from other countries. Large quotas were given chiefly to countries with which Czechoslovakia had a favorable trade balance and frozen credits awaiting liquidation. For example, on March 7, 1936, the Czechoslovak and Yugoslav tobacco monopolies concluded an agreement by which the Czechoslovak monopoly was to purchase larger quantities of Yugoslav tobacco in order to liquidate credits frozen in Yugoslavia and to compensate for exports to Yugoslavia.[52]

In its foreign economic relations Czechoslovakia granted unconditional most favored nation tariff treatment to all European countries and to about fifteen non-European countries (1938), including the United States. Some fifteen Czechoslovak trade agreements with customs tariff concessions have been concluded.[53] The Reciprocal Trade Agreement with the United States, signed March 7, 1938, doubtless would have been an important document, had not other events negated it before it had a chance really to function. A noteworthy feature in this

[51] *Ibid.*, footnote 40.

[52] *Ibid.*, pp. 74-75.

[53] *Ibid.*

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agreement was that the United States recognized exceptions to the most favored nation clause by not regarding Czechoslovak preferences to Austria, Hungary, Yugoslavia and Roumania as violations of the clause. Thus the formation of a tariff group of Danubian states was encouraged.[54]

A German decree of October 14, 1938 established a temporary customs zone, comprising that part of the Sudeten area which was contiguous to Germany proper, in which the customs laws (including duties, regulations, etc.) of Germany were to be applied to imports from third countries; a similar zone contiguous to the Austrian customs area was established, in which Austrian customs laws were similarly applied. No duties or taxes were levied on reciprocal trade between the two zones. Imports from these zones into Germany were duty free, except certain articles listed in a decree of October 6, 1938. Czechoslovak imports into both zones were exempted from import duties and taxes.[55]

When Czechoslovakia gained its independence it took over the old Austro-Hungarian customs tariff. After Czechoslovakia lost its independence, its customs tariff was still in use. By an Administrative Decree of March 24, 1939, Germany stated that the customs frontier between itself and the provinces of Bohemia and Moravia was to be maintained until further notice, and that the Czechoslovak customs tariff was to remain provisionally in force on imports into Bohemia and Moravia. At the same time the German system of exchange control was put into effect in these provinces.[56] Thus ended the Czech experiment in tariff-making.

VI

A thorough evaluation of Czechoslovakia's tariff policy would entail an analysis obviously out of place in this article. Some opinions, however, may be expressed.

The dependence of the Czechoslovak economy upon world economic conditions was established by the treaties compris-

[54] League of Nations, *World Economic Survey, 1937/38*, p. 170.

[55] *Commerce Reports*, Nov. 12, 1938, p. 1013.

[56] *Ibid.*, April 1, 1939, p. 304.

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ing the Peace of Paris. Czechoslovakia was awarded 80 per cent of the industries of the Austro-Hungarian Empire, but with a home market of 13½ million people in place of the former 52 million, the new nation was able to consume only 30 per cent of its own production. The remainder had to be exported. Export trade, therefore, was a prime necessity. In general the Czechs, with their "export psychology" acquired under the Habsburg Empire, managed to secure sufficient outlets for their products until the combination of world economic depression and an unsound tariff policy threatened the basis of their economy, export trade.

Despite the dependence of Czechoslovakia upon exports, there was a conflict over tariff policy as early as 1926, in which protectionist forces triumphed. Probably the most important tariff act in the history of the country was the law of June 22, 1926. It was followed by a commercial treaty with Hungary, in 1927, which might be considered a gain for Czechoslovakia. The effect of high Czech agrarian duties became exceedingly unfavorable, however, during the world economic crisis. Their effect upon the political situation of Central and Southeastern Europe, from the point of view of Czech independence, was perhaps even more important than the "economic" consequences from which they in part emerged.

The condition of Czech industries, partly a result of the protective tariff policy, illustrates the unfavorable state of affairs which developed during the world depression. For example, the metallurgical industry, dependent upon export business because of its swollen productive capacity, was in great difficulty. Large amounts of capital had been put into iron and steel works in order to carry out the large-scale production necessitated by competition in the world market. The output was now too great to be disposed of, and even the domestic market was in dire straits, since a policy of relatively high internal prices had prevailed during the time of concentration on export markets. At the beginning of 1933 only five of twenty-seven furnaces were in blast.[57]

[57] *Economic Conditions in Czechoslovakia, 1933*, pp. 20-21.

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More important was the plight of the textile industry. Italian and Japanese competition became severe. Italian goods displaced Czech textiles in some South European markets, and Czech merchants found it almost impossible to compete with the Japanese in overseas markets. The difficulties of the textile industry were in part a result of agrarian protection. Formerly the Czechoslovak mills had relied extensively upon the markets of Southeastern Europe. But there was growing unwillingness there to import large quantities of Czech textiles unless, as already remarked, Czechoslovakia would import larger amounts of agricultural products. This the dominant Czech agrarian interests would not do. The home market offered no compensation for the loss of industrial exports that resulted. Even under prosperous conditions the domestic market could consume only one tenth of the output of textiles. Since the textile industry had no cartel arrangement, intensive price-cutting to get business developed.[58] On the other hand, many industries were able to maintain a profitable level of prices by means of cartel agreements. These interests were strong enough to prevent passage of a "Cartel Law" aimed at such practices. Besides producers, many branches of wholesale distribution were included in the cartels; for example, in the iron, sugar, paper, starch and coal cartels.[59]

The Czechoslovak balance of payments illustrates the unfavorable economic position of the country during the world economic depression. Until the end of 1930 the current items of the balance of payments offset each other. In 1931, however, there was a deficit of approximately 400 million Kc. in these items. The trade balance was the most important item in the balance of payments, for the surplus from it was used to meet the debit on capital items. In 1932 there was an unfavorable trade balance of 144 million Kc., and though there were surpluses in the trade balance after 1932 they were only paper surpluses, since exchange control in many countries had tied up Czech credits and thus prevented their use in settling

[58] *Ibid.*, pp. 26-27.

[59] *Ibid.*, pp. 37-38.

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the deficit items of the balance of payments. Other items once favorable became debit items during the world depression—for example, the tourist traffic — and once-important credit items, such as railway transit traffic and emigrant remittances, were reduced to unimportant size. To meet its current deficits in the balance of payments, Czechoslovakia had to use surpluses accumulated in previous years. She also forced the surrender of foreign assets to the Czech National Bank in 1931 and 1932, and resorted finally to devaluation of the currency in 1934 and 1936.[60]

Finally, it is probable that the high agrarian duties played an important part in the combination of circumstances which led to the dismemberment of Czechoslovakia. It has been shown how these duties led to strained economic relations with the Central and Southeastern European states, which then turned toward Germany for closer economic ties. The connection between economics and politics was especially demonstrated by the Czech textile industry. This industry, in desperate economic condition, was concentrated in the Sudeten region of Czechoslovakia, and this region became the center of Germany's anti-Czech propaganda. Whether different policies could have changed the course of events is a debatable question. That an effort to alter them was not made was due to the power of the agrarian groups. They had acquired a vested interest in protection by 1926 and they grew in strength until the course of political events proved to be too much for them.

[60] *Ten Years of the National Bank of Czechoslovakia*, pp. 203-209.

HAROLD S. DIAMOND

BROOKLYN COLLEGE

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THE SELIGMAN CORRESPONDENCE II *

Henry Carter Adams [15]

November 9, 1886.

. . . . .

I neglected to say anything about the Cornell matter which you mentioned. . . . There is not very much in it as yet, but it is true that a slight friendly disputation took place last Spring [in a forum on the labor question]. Things perhaps were said which in less sensitive times would not have been said, but I do not see that I have any reason to apprehend difficulty. At least this is the way the matter should be understood for the present.

November 17, 1886.

I sent you yesterday a copy of my *Outline* [of *Lectures on Political Economy*] second edition. . . . It is of course but an outline, but it occurred to me if you were willing to notice it in the next . . . number of the [Political Science] Quarterly it might be of use to me. I do not like spon-

* The first installment of the Seligman letters appeared in the March 1941 issue of the QUARTERLY.—ED.

[15] Adams (1851-1921) was one of the most creative figures in American economics. In 1886 he was forced to leave Cornell after some utterances on the labor question, but he found a haven at the University of Michigan. His "Relation of the State to Industrial Action" (American Economic Association Publications vol. 1, 1887) and *Public Debts* (New York, 1887) are classics in the literature of government financial policy and government regulation of industry. Placed in charge of the division of accounts and statistics of the recently established Interstate Commerce Commission in 1888, Adams led the way in carrying out the principle that effective public control of any industry could be achieved only through prescribed accounting and statistical practice. He was the first American economist to embrace marginal utility in a treatise (see his *Outline of Lectures on Political Economy*, 1881) but later at least formally rejected such economics as tending to obscure the fundamental economic problems. For accounts of Adams see S. L. Bigelow, I. L. Sharfman and R. M. Wenley, "Henry Carter Adams", *Journal of Political Economy*, 1922; see also "Memorial to Former President Henry Carter Adams" in *American Economic Review*, 1922.

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taneous expression provided for beforehand; but there is just enough truth in the delicacy of my relations at Cornell, to lead me to desire the expression of approbation, at least of scholarly attitude, on the part of influential writers. If, then, the Line of Thought on [the] Social Question meets your approval, it would be advantageous to me to have the Quarterly say so. This is as near as I ever came to asking a favor. . . .

April 27, 1887.

Ely sent me your letter . . . containing motion in Council [of the American Economic Association] respecting [Arthur Twining] Hadley [of Yale], Laughlin, *et al.* You know I was, at [the first meeting] . . . in favor of a special invitation to these men and that it stands on the minutes that such invitation be sent them, and that there are now vacant places in the Council, which they were to fill, *provided* they accept our election to membership in the Association. They refused our invitation, and it does not seem to me that we could very well go over the same ground again unless they have in some way shown a change of disposition. . . . You know how much I deprecated the ways in which the Association was given birth, but now we have it, we must for a time keep it running as it is. . . .

June 20, 1887.

. . . . .

. . . . I am free to say that I have not thought out clearly the exact limits which should be placed to the conceptions, Society, State, Government. I am quite sure the Germans lead to confusion in expanding the conception State, so as to include (practically) Society. . . .

May 27, 1889.

. . . I really don't think anything more serious comes out of the attack of the [Detroit] Tribune [on Adams as being a free trader] than a bit of "free advertising." There is no suggestion of *ousting* or any pressure brought to bear to repress opinions.

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I confess I cannot understand what the Tribune was at except to defeat the "appropriations" which were, and are yet, before the Legislature. If it tried this, it signally failed, for our $216,000 which we asked this year for extras, passed the lower house last week, 64 to 10. Never passed by so large a majority before. The Senate we have always counted on our side, and the Governor, who two years ago cut us down on a veto, has promised to sign our bill. Michigan isn't so bad a state after all.

May 14, 1892.

. . . . . .

. . . I cannot think that Dr. Ely's administration is wholly at fault for the lack of interest in the [American Economic Association]. . . . The fact that the various schools and colleges which make a specialty of political science have seen fit to claim the best work of their instructors for publications supported by themselves is, to my mind, the real cause of our present unfortunate situation. . . . We have so many publications on political science at present that it not only is impossible to read them, but the lack of confidence with which one regards them seems to take from the interest one has in any publication bearing on political economy. Perhaps I am wrong in my diagnosis, but it seems to me that the competition between the various schools is showing itself in such a way that an Association which shall gather up the best thoughts of all schools is almost impossible of realization. . . .

May 25, 1892.

. . . . . .

. . . The Association cannot live if it is regarded as a place for the publication of Doctor's theses. The way out of the difficulty is plain, but frankly, I have no hope, for the personal interests of those of you who have Reviews to support, and the rivalry between the various schools is too strong. ["It would be exceedingly advantageous if we could have in the United States a journal of political economy that is recognized as the representative of scientific economic thought, leav-

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ing to the colleges and minor publications the representation of schools of thought or of particular educational interests", Feb. 9, 1899.] [16]

Aug. 28, 1894.

I quite agree with you that this fuss about Ely [for teaching supposedly subversive doctrines at the University of Wisconsin] is not only a pity, but it is a great mistake. The authorities at Bloomington, Indiana, where Professor [John R.] Commons is, wrote me some time ago inquiring as to what I thought of Commons. . . . I put the matter as strongly as I could that an attempt to investigate a professor of Political Economy for doctrines held would not only be detrimental to general education but would do more than anything else to check the conservative influence which [the] writings of economists are exerting upon the general social and industrial question.

The New York Nation is a decided Bourbon. Its editors have learned nothing during the last twenty-five years and I doubt if they are capable of learning anything. Perhaps in the general shifting of social forces, it is necessary to have a classical expression of incompetent ideas but I must say I weary of the reiteration of major premises which are found in the columns of this paper.

June 1, 1896.

. . . . .

The more I do with the Interstate Commerce Commission, the more despondent I become as to the outcome of the commission idea, and yet the more interested am I in doing what lies in a Bureau of Statistics and Accounts to realize that idea. . . . Should I say anything for [William Smart's candidacy for the newly established Adam Smith professorship of political economy at Glasgow] . . . it would be largely because you consider it proper to do so. I have read his translations [of the works of Böhm-Bawerk and Wieser] and doubt not that the work is valuable which he has done. I have also

[16] Taussig and Irving Fisher, along with Adams, were especially active in seeking to get the various colleges to surrender their publications and support one publication for the field.

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his book on "Value" and one other work of his, but may frankly say I can not see either genius or life in the books. To my mind the Austrian School has already exhausted itself and I am wondering whether so clever a man as Clark will be able, after committing himself to the mechanical reasoning of the School, to pass beyond its limitations. I am more convinced than ever that the historical method of investigation properly understood is the one true method and that being the case, I can not quite see why I should use whatever slight influence I may have in securing a position in an important university for a man who is an interpreter of the Austrian School and nothing else. I am going to write to Ashley about it and I will then do what seems to be best for the line of thought which appears to me essential for the advancement of economic science, and what is of more importance, the solution of the moral problems presented by industrial changes, to our generation. . . .

June 7, 1901.

. . . . .

I am in a good frame of mind this morning to write on trusts, having received a "proposal to purchase" a little stock I had invested in a wire fence company, which courteous suggestion means that if I do not dispose of this stock, it will be worthless within a year. I wish you would tell me frankly what chance, in your opinion, there is, under present industrial conditions, for a man who desires to make provision for his old age and for his family to obtain investments which are safe and in which he feels some degree of proprietorship. I find myself impelled, against my will, to the extreme theory of state control, for it seems to me that the time has come when the American people are obliged to choose between responsible control by means of relatively poor government administration, and better administration in the hands of private corporations which recognizes in no sense any responsibility to the public. And when that alternative comes to be clearly recognized, it is merely a question of manhood and morality and not a question of industry that is to be decided.

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April 14, 1902.

I did not sign that report in the Ross case because I wished to boycott Stanford University, or to try to teach President Jordan a lesson. I did so simply and solely as a means of stating to the working people of the United States that the economists of the country had not been bought.[17]

June 20, 1904.

. . . . .

According to the programme [of the Congress of Arts and Science Universal Exposition, St. Louis] I have the [paper on "The Relation of the Science of Finance to Allied Sciences"]. . . . I have not thought very much about this paper, but had felt, inasmuch as I was merely a substitute for Professor Wagner of Berlin, that I should be justified in giving what would seem to be his point of view, with which, indeed, I am fairly sympathetic. It would distinguish between economics and finance, showing the bearing of finance to the social sciences both as an important element in theory and as an agency in carrying out proposed reforms. This would lead to a discussion of the extent to which financial machinery may be used in practical administration for other than financial purposes. I should also try to say, in another way, what you indicated in your New Orleans paper [before the American Economic Association], that the science of finance is *par excellence* the branch of economic science which lays stress upon the organic or collective conception of social relations, and point to the fact that the development of industrial conditions since John Stuart Mill has caused the reversal of the situation in which he found himself when treating of taxation. We have almost come to the point where the individuality of business conduct is swallowed up in its collective character so that the individual point of view is now the exception rather than the rule.[18]

[17] The case concerned the involuntary resignation of Professor E. G. Ross from Stanford University. Professor Seligman was head of the committee which was appointed by the American Economic Association to investigate the matter. The committee condemned the action of the university.

[18] The paper is in *Congress of Arts and Science Universal Exposition, St. Louis, 1904*, edited by Howard Rogers, vol. 7 (Boston and New York, 1907).

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Dec. 26, 1907.[19]

. . . . .

. . . [The division of Statistics and Accounts of the Interstate Commerce Commission] is the only office, so far as I am aware, which is clothed with accounting and statistical jurisdiction over railways, express companies, sleeping-car companies, pipe-lines, and, in cooperation with the States, electric carriers. If to these is added partial jurisdiction over water carriers, we are in a better position to attack this general problem of comprehensive commercial statistics of transportation than any other bureau.

. . . If this work were transferred to the Interstate Commerce Commission, it would provide for a complete statement of the statistics of transportation. These statistics may be classed under three heads:

(a) Physical and financial statistics, covering all questions of the classification of assets and liabilities, mileage, inventory of equipment, as well as intercorporate relations, and the organization of independent carriers into operating systems.

(b) Operating statistics. . . . By this class of statistics I mean those that measure the traffic, assign cost to the traffic, and make such assignments to units of transportation as may be of advantage to students of advanced economics. I am . . . now working out with . . . [the Committee on Statistical Inquiry

[19] This and the following letter deal with the reorganization of the statistical work of the federal government. The Secretary of Commerce and Labor on September 20, 1907 appointed a departmental committee to examine critically into the department's statistical work which was divided among six different bureaus. Professor Seligman, Professor J. W. Jenks of Cornell and H. Parker Willis were appointed an advisory group to the committee.

One of the pertinent problems was the adequate collection of statistics of internal commerce. As it was, the Bureau of Statistics of the Department of Commerce collected only a limited range of data on water transportation. The question arose whether the independent Interstate Commerce Commission should not be assigned this task because of its control over the railroads. But the members of the advisory committee felt that the statistics of internal commerce should be supervised by a bureau that had charge of both domestic and foreign commerce in order to facilitate the work of scientific investigators. Adams' division, they felt, might coöperate with such a bureau. This met the opposition of Adams. The questions he raised bear on wide issues which have not yet been satisfactorily solved.

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of the American Railway Association] a carefully devised scheme of operating statistics.

(c) Commercial statistics of transportation. These statistics pertain primarily to tonnage, the character of the commodities, the origin of the commodities, the destination of the commodities, and, in short, all those items which pertain to the commercial geography of the United States, so far as that is reflected in transportation. . . . The statistics under (a) and (b) are largely administrative in their character, and in case the Federal and State Commissions ever take a comprehensive view of their functions as arbiters of rates, commercial statistics will also become of great importance for administrative purposes. . . .

. . . Some of the information which would be contained in these commercial statistics of transportation would be secured by correspondence with boards of trade, chambers of commerce, and the like, in the various cities. We, of course, have no jurisdiction over such bodies, nor can such jurisdiction be given. I feel, however, that definite and permanent cooperation ought to be established between any body which assumes to supervise rates, and boards of trade and chambers of commerce. It is a source of weakness in the American situation, that these local bodies are unorganized, and I see no reason why it would not be possible to establish here something of the relation which exists, for example, between the Government and such bodies in Germany. The lever by which we could secure cooperation from the statistical point of view would be that the Interstate Commerce Commission desires the advice of local commercial bodies in order to determine the local interests involved in every question of railway rates. We have organized the States; they stand loyally behind us in this whole matter of uniform accounting. We could not otherwise master the situation, for example, that arises in connection with electric lines, for the Interstate Commerce Commission does not have direct jurisdiction over more than 20 per cent of this mileage. Thirty States, however, do have such a jurisdiction, and they have all promised to back us up. This, in my opinion, is the beginning of definite formal organization with the

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States, and if commercial statistics of transportation were assigned to this office, I should immediately begin to work out some form of practical cooperation with the commercial representatives of the cities. It is thus evident that the interests involved go far beyond the question of gathering statistics, and [it] becomes again a question of organization for the purpose of administering the law.

. . . . .

We are in a position to do this work more easily and successfully, and with less irritation to the carriers, than any other department of the Government. . . . The carriers have the right to be approached by as few agencies of the Government as possible, in order to secure whatever information the Government may require.

P. S. . . . This office has cooperated with other offices, as for example, in Bulletin 21 of the Census. . . . It is one thing, however, to provide for a definite piece of work; it is quite another thing to provide for cooperation that is to continue year after year. Think of the mixup that would come in correspondence if schedules issued by this office should be edited by another office not familiar with our methods, and with the principles that have been worked out during twenty years of correspondence. It is our good will with the carriers that I hesitate to jeopardize by loaning it to another bureau. Any attempt to provide instructions for an outside office, so that it would avail itself of our methods of procedure, would be more troublesome than to have the work transferred bodily.

. . . We have built up a pretty good machine, we have the good will of the carriers, and there is a tendency on the part of some to burden the machine with work which is extraneous to its original purpose. I have resisted this tendency, so far as I am able, but in the case of the commercial statistics of transportation, I am frank to say that it seems as though we ought to assume that responsibility, if it is offered to us.

December 30, 1907.

. . . I am quite willing to admit your conclusion . . . that internal commerce and foreign commerce are so closely allied

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that [the] compilation and publication [of the statistics of both] should be intrusted to the same bureau. I doubt, however, if I can agree to your suggestion that it is at all practicable as a permanent organization for one bureau to collect material and for another bureau to compile it. This seems to rest upon the assumption that the collection and compilation are two essentially different processes, when in fact (at least such is the experience of this office) 70 per cent of the time of the office is placed upon the examination and editing of returns before they are in shape for compilation. Now, it seems to me that the correspondence which arises in connection with this process of editing the returns must be directed from the point of view of compilation. The line you draw in the plan you submit is a line which in fact can not be drawn in practical administration. The fact that under the new interstate commerce law I have a corps of special examiners in the field emphasizes yet further this line of considerations . . . this office should have nothing to do with commercial statistics of transportation, rather than be placed in the position of being under the direction of another office relative to the questions that should be asked the carriers or the character of the letters in testing the accuracy of the answers rendered. If it is merely a matter of publication of results, the responsibility for the compilation of which lies with the office that has the authority to demand information from the carriers, I have nothing to say. There is doubtless considerable in what you say from the point of view of the convenience of investigators, that the statistics of foreign and internal commerce should be published in the same volume.[20]

[20] The committee with the approval of the advisory group finally recommended that the Bureau of Statistics and the Bureau of Manufacturers be merged into a new bureau, that of Foreign and Domestic Commerce; that the division of domestic commerce in the new bureau be enlarged and strengthened, both in funds and power, to collect adequate internal statistics. Other recommendations were that a division of the tariff be a subdivision of the new bureau, but that the Bureau of the Census be left as an independent bureau in the department. Most important perhaps was the recommendation that an interdepartmental statistical committee be formed under the jurisdiction of the Secretary of Commerce and Labor, said committee to be created by executive order and to consist of a representative from each of the executive departments

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Richard T. Ely [21]

November 3, 1883.

. . . The interest you take in political economy and social problems is very gratifying to me. It augurs well for our future that young men like you of wealth and social position concern themselves about these questions.

Your encouraging remarks about my work were appreciated. A man in my position is attacked so often that he needs the support of his friends. . . .

June 9, 1885.

. . . I am now about to organize an Economic Association of which I send you the program. Strong support has been promised and I trust this Association will exercise influence on public opinion. Do you feel like giving it your support? I should be glad to have you take a prominent position in the management if you feel inclined to enter into it heartily. I think you will understand what it is from the program. It is to be very broad. You will notice something about the *church* in it and you might reply: But I do not claim to be a Christian. Well, this Association deals with Christianity simply as a social influence.

June 23, 1885.

. . . Allow me first of all to congratulate you on your appointment to the Columbia lectureship. . . . I truly hope you will publish something soon. It is a fatal mistake to wait too long. President White used to warn me against it continually. Many wait so long to prepare themselves thoroughly that they die without having accomplished anything noteworthy. Why not get out a little book on *Social Movements in England in the Nineteenth Century?* . . .

and independent government establishments. *Statistical Reorganization: Report of a Committee Appointed by the Secretary of Commerce and Labor to Inquire into the Statistical Work of the Department, March 2, 1908* (Washington, Government Printing Office, 1908).

[21] Ely was the moving spirit in the organization of the American Economic Association.

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Now about the American Economic Association. I fear I was not very clear. The platform can, if necessary, be changed. I am sure I can not see how your credo differs from mine and I am sure those interested in the A.E.A. are all conservative. Will you suggest such changes as you think proper? I believe in individual initiative and effort and do not wish to remove the necessity for both. It was not meant that the State should everywhere interfere. As to laissez faire the idea is to counteract the influence of the Sumner crowd. . . . I quite agree with you on the subject of competition and do not by any means accept all [that is] said by the Christian Socialists. The idea of the A.E.A. is to accomplish in America what the Verein für Socialpolitik has done in Germany—not necessarily accepting all the doctrines of the Germans. What I would like to see is simply an association of the younger progressive elements and the platform must be broad yet it must not include men of the Sumner type nor be used for partisan purposes either for free trade or protection. . . .

April 25, 1887.

. . . It seems to me we should proceed cautiously in . . . [asking opponents of the American Economic Association to join]. We have already achieved what looks to me like a decided success and our prospects are undoubtedly improving every day. . . . But I think you are quite right in your feelings about unity of our efforts. This question however arises. If we introduce discordant elements will we not endanger our existence—especially just now? When we are a year older, it will not make so much difference. But is it not best to be very conservative for the present? Those who are now members differ widely in view but we can work together harmoniously. There is no danger of personal animosity and of some quibbling one way and some another. Please do not misunderstand me. You must not think I oppose your views. I only wish to point out certain dangers—I see so many shipwrecks of societies on every side that it seems to me we ought to be very careful. . . .

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October 22, 1890.

. . . Everything looks like a fine meeting in Washington. I am very glad that Dunbar and Taussig will attend. The old issues, which divided the economists a few years ago in this country, are no longer so important as they were and now is the time for a love-feast! There is no doubt—as between us—that there was an aggressive and polemical element in the A. E. A. at first but that early character the A. E. A. has lost and on the whole I do not regret it. What we want now, is to bend all energies to make it an active, progressive society. New differences will continually arise but we must agree to disagree. . . .

Franklin H. Giddings[22]

March 27, 1890.

. . . Last Sunday . . . the New York Times contained a vigorous attack on Spencer's work all along the line. I think I can show that his interpretation of the physical aspects of social development is essentially true, but it must be restated in new terms, and reillustrated and enforced by material drawn from the fresher researches in economics, politics and so on. . . .

March 1, 1926.

. . . . .

We cannot explain the origins of society in terms of the "demand" side of economic phenomena, or in ways of satisfying wants, but can explain them in terms of the "supply" side, that is to say, in terms of the conditions and situations within which satisfaction becomes possible. . . . Animals and men flock to feeding grounds, including fishing and hunting

[22] Giddings (1855-1931) was professor of sociology and the history of civilization at Columbia University. He collaborated with Clark in the writing of series of articles which were republished as *The Modern Distributive Process* (Boston, 1888). His books on sociology substantially consisted of presenting the "sociological base" of the new marginal utility economics which Clark introduced. For an account of Giddings see J. L. Gillin, "Franklin Henry Giddings", in *American Masters of Social Science*, edited by Howard W. Odum (New York, 1927).

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grounds, tillable lands, grazing lands, forest and mineral lands. This means concentration and commingling, and group formation. In other words, the beginning of the socializing process.

It is in considerations of this kind that sociologists find reason for their contention that society must be accounted for in terms of ecology rather than of economics.

Worthington C. Ford [23]

Jan. 30, 1886.

. . . . .

The present movement to give "labor" a seat in the Cabinet is most absurd. It might be justified in connection with a plan to pension the Ex-President. That is all very well but the other scheme is so absurd as to read like a jest.

When the Democrats have settled their differences among themselves we may look for some legislation. It seemed a short time ago as if they would knife one another, but the queer conduct of the Republicans in respect to nominations is consolidating their opponents, and may compel them in self-defense to do something, but not on the silver question. Indeed the out and out opponents of silver have so wrought up the silver men that I should not be surprised to see the present limitation on coinage broken down, and unlimited coinage ordered. The campaign against the dollar has been very injudiciously managed, so as to appear as an attack upon silver. Hence the signs of retaliation on the part of the silver men.

[23] Ford (1858-1941), as chief of the Bureau of Statistics of the Department of State (1885-1889) and then of the Bureau of Statistics of the Treasury Department (1893-1898), was in close contact with government and public opinion. He was previously General Secretary for the Society of Political Education which was organized in 1890 and issued popular tracts on the political and economic questions of the day. Ford prepared for this series the *Standard Silver Dollar* (1884) which criticized the "free-silver" agitation and the coinage act of 1878 and argued that only such a quantity of silver should be coined as is demanded by "the wants of trade". He taught statistics at the University of Chicago in 1901, but the greater part of his life was devoted to collecting, publishing and supervising historical documents.

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Simon N. Patten[24]

May 11, 1918.

. . . . . .

. . . I have no higher estimate of production taxes than you have especially of surplus profits taxes. Nor do I believe in taxes to better distribution. These evils should be met in other ways. . . .

T. S. Adams[25]

Sept. 24, 1917.

. . . . . .

Are we more in danger of taxing excessively than of borrowing excessively? As a historical generalization I feel certain that the advantages of loans have been more keenly felt than "the advantages of taxes". . . . Had I been told in August 1914 that England would soon be levying a normal income tax of 25%; progressive income taxes which carried the upper limit to 42%; and excess profits taxes rising to 60% or 80%; I should have repudiated the whole proposal or program as revolutionary, and should have done it with much heat and uncertainty. The event has proved however that the common legislators of England were wiser than students like myself. At this moment, I hesitate to say therefore that the old excessive reliance upon loans has suddenly disappeared, and that the American community is about to swing to an excess of which it has never before been guilty. . . .[26]

[24] Patten (1852-1922) was professor of political economy at the University of Pennsylvania and an outstanding teacher. He was another early exponent of marginal utility economics, but he had a unique and complex terminology of his own that made him feel at odds with the other variants of the school. He was one of the most important forces in the development of schools for social work. For an account of Patten see R. G. Tugwell, "The Life and Work of Simon Nelson Patten", *Journal of Political Economy*, April 1923; see also his *Essays in Economic Theory*, edited by R. G. Tugwell (New York, 1924).

[25] Adams (1873-1933) was professor of political economy at Yale University. The letter recalls a memorable controversy among economists as to whether war financing should emphasize taxes more than loans.

[26] Part of this letter, which in fact was in the form of a series of comments on Professor Seligman's memorandum on war finance, was published in Roy Blakey's "The War Revenue Act of 1917", *American Economic Review*, Dec. 1917.

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Charles H. Hull[27]

6 August, 1897.

. . . . .

. . . As citizens we are interested, as educators we are doubly interested in the intellectual freedom of our schools. We are interested not merely because it means bread and butter or the loss thereof to some of us. If that were our sole motive, it might be adequate but it would not be worthy to produce action. We are interested rather because we believe, having the experience of a millennium of educational history to back our belief, that the unfettered search for truth is the noblest discipline for the human mind, the truest incentive to right living. The truth itself is high, we may not attain unto it—save we be Congressmen from Massachusetts—it is difficult to determine, changing, elusive; but the search for it, though strenuous, is practicable, it is the best that we can do, and we lose that best when authority prescribes either the course or the specific goal of the search. Lessing's remark seems to me most profound, that if the Almighty should offer him a choice between all truth, held in His right hand, and the perpetual search for truth, held in His left, he, a man, knowing man's indolence, would bow before the left hand, and ask to be allowed forever to search for truth, though he might never find it, never certainly know it when found. For the search is education, the find is stagnation. As citizens, therefore, interested to prevent the stagnation of our intellectual life, and as educators, doubly interested to prevent such stagnation — by external coercion, because we are in a position doubly to appreciate the danger of it, I think it not only our right but our duty to protest [against the resignation of President E. Benjamin Andrews of Brown University because of his views in favor of bimetallism], let the action be construed or misconstrued as it may, let the effect upon the [American Economic] Association be what it will.

[27] Hull (1864-1936) was professor of political economy at Cornell University. He is primarily known for his two-volume edition of the *Economic Writings of Sir William Petty* (Cambridge, 1899).

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To hesitate because the effect on the Association might be secessions, even disruption, would be to commit the same fault which I have criticized in the Brown Corporation, to mistake the end, the progress of economics, for the means, the Association. The Brown trustees mistake their duty. They are trustees not of the truth—that has never been confided bodily to any fourteen men — but of the search for truth. To the prosecution of that search their endowments and their income should be devoted; to devote them to any other end is a malversation of the trust, a diversion of it from the purpose which alone can justify its existence. The greater the funds they may heap up by chucking that sacred search, the greater their iniquity. Of the Association the same is true. It may better go to pieces, if need be, in an attempt to purify the intellectual atmosphere, than to continue in an atmosphere which must make its continuance a useless impertinence. . . .*

* The third installment of the Seligman letters will appear in the September issue of the QUARTERLY.—ED.

JOSEPH DORFMAN

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REVIEWS

Capital Expansion, Employment, and Economic Stability. By Harold G. Moulton, George W. Edwards, James D. Magee and Cleona Lewis. Washington, The Brookings Institution, 1940.—xv, 413 pp. $3.50.

Whether the preparation of this book will justify all the labor and expense involved time alone can tell. The impact on the American economy of the renewed outbreak of war and of our own defense program has been so terrific that already a discussion couched in terms of classical laissez-faire economics seems strangely unrealistic and faintly suggestive of the odor of mothballs. And should the outcome of the military contest result in the triumph of totalitarianism, then a study like that under review would lose most of its significance. Moreover, if the British triumph, there are few who believe that economic life after the war will have much resemblance to the kind of life that preceded it.

Yet this Brookings study had as its main purpose to help point the way to the restoration of economic prosperity under a rejuvenated business economy in the classical tradition. Believing, as many did, that the breakdown of the economy after 1929 was due primarily to a greatly impeded return-flow of investment funds into productive operations, the authors set out to discover to what circumstances this might be attributable. Then, having laid these bare, they hoped to be able to suggest how they might be overcome.

With this in mind, by way of introduction, the authors sketch for us, in the initial chapter, the process of assembling and apportioning investment funds before 1930. Following this are chapters analyzing the difficulties that arose in the period from 1930 to 1939, the causes thereof, and their deplorable consequences. The broad lines of the picture are familiar—an increasing supply of funds accompanied by a diminished demand; money and interest rates rapidly declining; investors of all kinds confronted with a serious diminution of income; the financial structure of corporate enterprise alarmingly weakened; the capital problems of business corporations, big, medium and small, all made much more acute. The authors dismiss with a suggestion of impatience the contention of some students that our economy, in its present form, has reached something like maturity,

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and that the demand for further large sums of capital is, therefore, bound to diminish. Analyzing the potentialities for new capital, the authors arrive at the conclusion that huge sums will be needed to restore prosperity, to provide for even the diminished growth of population up to 1980, and to supply the required basis for an improved standard of living. But in this connection, it must be said that while they satisfactorily demonstrate that enormous sums could be used for the purposes indicated, they show less convincingly that the actual accumulation and allocation of the funds can be reasonably expected under the system of free enterprise as it had developed up to 1930.

In Part II the authors come to grips with the problem of the relationship of government to private capital expansion. Here they discuss not only the effects of governmental regulation but those of taxation as well. A chapter is also devoted to the significance of public credit operations—the growth of the national debt and the establishment of the numerous federal lending agencies. In general, it may be said that in this whole field the authors lean toward the side of the business critics of the New Deal. This is especially noticeable in chapter xi dealing with the regulation of investment banking. But even in this chapter the anti-New-Deal bias is reflected less in direct criticism than in the subtleties of implication, of distribution of emphasis and of general tone. The authors' final conclusion is similarly suggestive. It reads: "The establishment of the stable conditions which are so sorely needed in the United States . . . largely depends upon the removal of unnecessary impediments to the flow of funds into constructive capital developments and the restoration of confidence in the future of private enterprise" (p. 336).

The impediments, referred to, and the bars to the restoration of business confidence are, of course, the regulatory measures and the general attitude of the Roosevelt administration. By way of contrast, it may be pointed out that another student comes to the following conclusion: "Although conclusive evidence does not exist, it is doubtful if fear of the law is causing honest business men to hesitate in asking for funds from the investment market. . . . Most of the available evidence seems to indicate that the relative paucity of new issues is due to a lack of incentive for expansion of existing productive capacities." [1]

[1] Wilford J. Eiteman, "Security Regulation and the Volume of New Issues", *Southern Economic Journal*, July 1940.

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Be all this as it may, and despite the fact that galloping events have largely replaced with new problems those discussed in the volume under review, the fact remains that the book is an interesting and well-written study.

E. E. AGGER

RUTGERS UNIVERSITY

A History of Economic Ideas. By EDMUND WHITTAKER. New York, London, Toronto, Longmans, Green and Co., 1940.—xii, 766 pp. $4.00.

Professor Whittaker has turned out the ablest history of economic thought since Gide and Rist published their great treatise. It ranges over a vast amount of material and runs from anthropological inquiries to the latest writings of John Maynard Keynes. Unlike most historians of economic thought, he has devoted considerable attention to the contributions of American writers. Each chapter has a short summary and at the conclusion comes a general survey under the familiar title of the "Scope and Method of Political Economy".

Professor Whittaker's organization of the material is novel. Organization according to topics replaces the familiar principle of a chronological series of studies of the great figures. In line with current developments is the great amount of space devoted to writers before Adam Smith and to topics not generally considered economic theory or even applied economics.

As the course of events has forced economists to face phenomena which only through cumbrous refinement could be forced into the accepted categories, there has been a tendency to study more thoroughly what the ancients, the medievalists and the mercantilists, as well as the physiocrats and the main tradition from Adam Smith to Marshall, had to say. Keynes, for instance, though drawing on secondary works, salutes the mercantilists as being nearer the truth on certain fundamentals than Ricardo and his successors.

The great controversies over the functioning of the monetary mechanism have not been the only important factor in the recent interest in the hitherto neglected parts of the past of economic thought, but perhaps more important have been the rise and functioning of highly developed and authoritarian economic organizations. Understanding of these schemes has required appreciation of the broad philosophical or sociological foundations. It so happens that much light is cast on these aspects by writers coming before Adam Smith or by writers not generally considered economists. At the same time

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the reëxamination of the foundations of the traditional laissez faire has forced attention as well on the heretofore ignored aspects or writings of the eminent figures in the history of economics as generally understood. These various movements have also led to considerable attention to the radicals and heretics. In addition the rise of such new problems as "business cycles" has called for inquiry into the genealogical development of these theories.

These various new tendencies Professor Whittaker has sought to bring within the compass of his book. Thus almost half the book is devoted to topics outside the ordinary discussions in economics. He has chapters on "Social Evolution and Social Thought", "Wealth and Human Industry", "Economic Individualism", "Property and the Distribution of Wealth", "Movements for Social Reform", "Economic Nationalism". The accepted categories, of course, are presented and so we have chapters on "Population", "Production", "Value", "Rent", "Interest", "Wages", "Profits". In addition, "Money" and "Business Prosperity and Depression" have each a separate chapter.

However, Professor Whittaker's procedure by topics is beset with certain difficulties. That method requires both a high degree of literary skill in organization and a comprehensive knowledge of the men discussed. Otherwise there is danger of considerable repetition, superficiality, mere cataloguing, and nonexistent contradictions.

In handling the broad philosophical and sociological aspects of the writers Professor Whittaker has followed the lead of James Bonar's *Philosophy and Political Economy* and has leaned heavily on what the students of formal philosophy and ethics have had to say. Thus at times the specific economic bearing on these matters plays a secondary rôle to what inevitably must be a mediocre attempt to resolve the quarrels of the philosophers.

Furthermore, the so-called broad foundational chapters might have been more closely integrated with the so-called technical chapters. It is hard to understand Professor Whittaker's emphasis on the theory of marginal productivity when all he makes of it is that a business man hires the factors of production up to the point where the return of the last unit of each equals the price of the last unit. Clarification of the differences between Von Wieser and Davenport on value would have supplied an interesting clue into the development of the underlying logic of the recent use of indifference curves. Readers may smile at such statements as "the social contract theory has passed into oblivion" because of its lack of historical support. The author's

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comparatively recent arrival in the United States excuses his oversight of Professor Mitchell's *Business Cycles* which appeared in 1913. This explains his statement that *Business Cycles: The Problem and Its Setting* (1927) "gives an enormous quantity of statistical data but deals with theories in true Institutionalist manner, by merely classifying the principal explanations and leaving it at that!"

JOSEPH DORFMAN

Marxism: Is It Science? By MAX EASTMAN. New York, W. W. Norton & Company, Inc., 1940.—394 pp. $3.00.

The scientific nature of Marxism and its prognostic approach to economic development have brought forth an orthodoxy which defines science in a way that scientists have defined mysticism. To question once more the philosophy of history that has achieved the status of a religion there could not have been found a more able, critical expositor than Max Eastman. But the concern with Marxism as a science has caused critics to overlook the fact that in so far as Marx had no theory of socialism, but a criticism of capitalism, there is a necessity for a further distinction between criticism and dogmatic *pronunciamenta.* Within Marxist dogma lies its programmatic content which has served various causes within socialism, only when it has been appealed to as a science of the breakdown of capitalism. Bernstein, with his interest in evolution and reform, found that the truths of this science came into sharp conflict with stubborn facts of an expanding German capitalism, which bore no traces of imminent collapse. Plechanov found that Marxism could scientifically explain "jumps in history" in order that a revolution could take place in so backward a capitalist country as Russia. Rosa Luxembourg, in her zeal for revolution, mystified Marxism into a "spontaneity" theory of the eruption of capitalism. Yet few Marxists would agree that the master's scientific analysis of "class society" would be applicable in a "classless society". In what way can science be said to have a class bias?

What Marxists have regarded as inevitable, they claimed to be scientific. The will to believe lent substance to the erection of a superstructure spun out of the prejudices of class analysis. The class approach had utility in translating will into motion and of giving symbolic meaning to the words "economic" and "contra-

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diction" as a dynamic, evolutionary, historical process. But where will becomes identified with doctrine and solidified into dogma, relative truths become the instruments of the critics who, to orthodox Marxists, became the revisionists, the doubters or deviators. Marx, in his own lifetime, and his adherents following him dissipated their polemical talents on those whose wills lacked the strength to believe. But as Eastman points out, there were also deviators among the orthodox who could not leave the building of a revolutionary party to history. These "engineers" of Marx, such as Lenin, had to fight the "liquidators" and the Narodniki in order to centralize control of the Bolshevik Party within the hands of professional revolutionaries. To Trotzky, with his theory of "permanent revolution", the Communist International was to be the instrument of achieving a worker's world. But the ability to translate a theory of history into the performance of daily events that refuse to conform to any blueprint philosophy has necessitated that official interpreters recognize the hidden truths beyond the scope of common man. "There is the esoteric doctrine, property of the few who have learned to think dialectically", and there is the vulgar gospel for the common people. Hegel himself said that his philosophy presupposed "a higher level of culture than ordinary", and this view was substantially carried over into Marxism. "The art of operating with ideas", says Engels, "is not inborn, and it is not bestowed with ordinary everyday consciousness." The inner truths are therefore only revealed to the high priests of Communism, appointed by Stalin to "see".

This book contains Eastman's "maturest reflections" and he therefore adds an appendix in which he deals with Sidney Hook, with whom he has debated for many years. Although both have been flogging the "dialectic" in recent years and both have pronounced "the horse dead", yet Eastman contends that Hook "is defending the Marxian Talmud at the bar of modern science." This entire controversy is now dated, but both Eastman and Hook, in their criticisms and rejection of the metaphysical superstructure of Marx, have overlooked the political utility of ideologies which become accepted and institutionalized.

JOSEPH CARWELL

COLUMBIA UNIVERSITY

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Monetary Management under the New Deal: The Evolution of a Managed Currency System—Its Problems and Results. By ARTHUR WHIPPLE CRAWFORD. Washington, American Council on Public Affairs, 1940.—x, 380 pp. Cloth, $3.75; paper, $3.25.

The purpose of this study, in the words of Dr. Crawford, "has been to present a broad picture of monetary developments under the New Deal. To this end the evolution of the managed currency system has been traced from the period just prior to the Roosevelt administration; the problems arising in its operation have been surveyed; the results have been appraised; and the outlook for the future has been explored."

The purposes of the author appear to have been fulfilled. This is a thoroughgoing study, carefully documented and scholarly. It is probably the most comprehensive and useful work on the monetary developments affecting this country since 1932 that has thus far been produced. The author seems to have overlooked nothing of any great importance. This study should be the standard reference work for all people interested in the monetary experiences of this country in recent years.

Dr. Crawford not only attended the World Monetary and Economic Conference at London in 1933 but, as a competent observer, has studied at close range in Washington, and with a wealth of valuable material at his disposal, the various steps in the evolution of our present monetary system. In addition, his manuscript has had the benefit of the criticism of Drs. Amos E. Taylor, E. A. Goldenweiser, Leon C. Marshall, Cyril B. Upham, Fritz K. Mann, and others. It is probably very unfortunate that the publisher is not equipped to give Dr. Crawford's work the advertising necessary to call it to the attention of the public adequately. This is probably just the handy, useful, and apparently highly accurate book that many people would like to possess. It is chiefly historical and factual in nature rather than a work of abstract theory; yet Dr. Crawford's appraisals seem to raise practically all the questions of principle that are of importance. In his interpretations the author tends to let facts speak for themselves rather than to drive home lessons in a manner that might not be welcome to the authors of some of our most indefensible monetary measures.

The reader may perhaps obtain a reasonably good picture of this study by a brief outline of its structure. Part I—"Before the New Deal"—contains a chapter on "Monetary Trends of the Hoover

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Administration", and one on "The Monetary Issue in the 1932 Campaign".

Part II—"Evolution of a Managed Currency System After March 4, 1933"—has eight chapters on the following: "The Roosevelt Revolution, March to June, 1933", "The London Conference of 1933", "Temporary Gold and Silver Problems", "A Permanent Gold Basis for Currency Management", "Silver in Monetary Mechanism", "Monetary Aspects of Banking Laws", "Changes in Forms of Currency" and "Constitutional Powers".

Part III—"Problems of Monetary Management and Results"—has eight chapters devoted to "Dual Authority in Monetary Management", "Objectives of Monetary Policy", "Operation of Credit Controls", "Results of Silver Policies", "Monetary Management in the International Sphere", "The Gold Problem", "Effects of Monetary Management", and the "Future of the Monetary Mechanism". The work includes fourteen useful tables (coming down to June 30 and July 1940), an elaborate bibliography, and a fairly thorough index. Aside from the tables, the textual material comes down to July and August 1940.

Regardless of the fact that it cannot be expected that all readers will agree with all of Dr. Crawford's statements of appraisal and interpretation, it seems clear that all readers should find this a useful and informing book. Even those monetary economists who have worked intensively in the field should find it a handy reference work. The amount of research which Dr. Crawford has put into this study is tremendous. He has surveyed and digested a very large number of government documents, as well as the pertinent standard works and monographs, which throw light upon the questions examined. This work should be on the shelf of everyone interested in the monetary experiences of this country in recent years and in our monetary structure today.

NEW YORK UNIVERSITY WALTER E. SPAHR

The Anatomy of British Sea Power: A History of British Naval Policy in the Pre-Dreadnought Era, 1880-1905. By ARTHUR J. MARDER. New York, Alfred A. Knopf, 1940.—xix, 580, xv pp. $5.00.

Among the scores of books about the British Navy, one can discover surprisingly few authoritative works on British naval policy, and fewer still on the conditions and influences which have shaped British naval ideology and the direction and pace of British naval

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development. In this volume of 600 pages, Dr. Marder has attempted to fill these gaps for the period 1880-1905; or, as he puts it, to write the "first reasonably complete study of British naval policy in all its ramifications in the vital pre-dreadnought era." Whether he has definitively attained this objective is perhaps debatable, but there can be no doubt whatever that this is a work of historical importance and enduring value.

The book opens with a systematic analysis of the causes of naval expansion during this period. Among many causes discussed in this section (chapters i-iv), the author emphasizes the revolution in naval architecture which was at that time rendering armaments obsolete almost as soon as constructed; the accelerating tempo of imperialistic expansion; the influence of Mahan's writings on sea power; pressure from the munitions industries; and the now familiar vicious circle of insecurity, rearmament, a heightened sense of insecurity, etc.

The author next turns to British naval ideology, or, as he calls it, the "fundamentals of strategy". In three admirable chapters, appropriately titled "The Invasion Bogey", "The 'Guerre de Course' Nightmare", and "The Two-Power Standard", he gives a vivid word picture of the confused thinking, doctrinal controversy, and interservice rivalry which characterized British naval discussion during those years. We see the War Office and the Admiralty repeatedly at loggerheads over fundamental issues of grand strategy. There was no dispute as to the "insularity of the United Kingdom and its dependence on foreign trade." But there were growing doubts in various quarters as to the "blue water" fleet's ability in case of war either to insure the British Isles against "lightning invasion" from the Continent or to protect British merchant shipping from hostile commerce raiders on the high sea.

From this point (p. 119) the text follows the chronology of events. It is a grim story of diplomatic crises, war scares, war plans, armaments and more armaments, viewed against a background of bureaucratic conservatism and the unending suppressed warfare of British internal politics. From beginning to end runs an ominous note of European unrest and rising revolt against the predominant sea power of Great Britain. From interminable discussions in the Admiralty, in the Cabinet, in Parliament and in the press, one senses the mounting anxiety with which Englishmen were even then viewing the development of new commerce-destroying weapons and the accelerating pace of naval construction abroad. The Anglo-Japanese Alliance was, among other things, a tacit confession of England's inability to

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maintain local dominance in Asiatic waters while simultaneously taking care of more pressing "claims nearer home" (p. 428). "By 1904-5 British naval policy vis-à-vis the United States was founded upon the assumption of American supremacy in the western hemisphere" (p. 449). Only by concentrating its fighting units in European waters did the British government succeed in holding a precarious dominance over the sea approaches to the British Isles and over the Mediterranean route to India and the Far East. The study closes with the construction in 1905-6 of the *Dreadnought*, the all-big-gun battleship which introduced a revolution in capital ship design that enabled Germany to start on nearly equal terms the final lap of the desperate pre-war struggle for primacy on the sea.

Marder's book represents a prodigious effort. In a bibliographical foreword, the author says he has "pored through every scrap of published material and innumerable organs of public opinion. . . ." He further notes his "good fortune to be permitted to see various unpublished materials of the first importance." Among those cited are: the enormous collection of papers in the Admiralty archives; the private papers of Lord Spencer, First Lord of the Admiralty (1892-5); certain papers of Admirals Sir John Fisher, Sir Reginald Custance and Sir Frederick Richards. In addition he has had the benefit of consultation with Admirals Sir Douglas Nicholson and Sir Reginald Bacon, as well as with the Earl of Selborne, First Lord of the Admiralty (1900-5), and numerous others.

With all its excellence the book does have certain limitations. One searches in vain for any systematic analysis of the geographical, technical, economic and political conditions which enabled Great Britain to exercise a virtually global sea power during most of the nineteenth century. Nowhere is there a concise statement of the global importance of England's historic grip on the ocean portals of Europe. Nor does the author, in the opinion of this reviewer, sufficiently emphasize the world-shaking consequences of the naval developments in America and Asia which challenged British sea power on the periphery, of the simultaneous developments in Europe which challenged that power at its source, and of the rise of torpedo craft and other new weapons which were destined to undermine the historic security of the island base upon which British sea power ultimately depended. Finally, the book's rather abrupt close, with no concluding synthesis or summary, leaves one with a sense of frustration. Indeed the whole work suffers from a serious dearth of summary

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statements and generalizations which would greatly assist the reader in his toilsome way through the maze of chronological detail.

There is no conventional bibliography, not a serious omission considering the wealth of footnote documentation and the excellent index. The book is an indispensable reference work for any well-stocked library, and required reading for every serious student of diplomatic or military history. One looks forward with keen anticipation to Dr. Marder's second volume which is to carry the study of British naval policy down to the year 1914.

PRINCETON UNIVERSITY HAROLD SPROUT

Versailles Twenty Years After. By PAUL BIRDSALL. New York, Reynal & Hitchcock, 1941.—xiii, 350 pp. $3.00.

For a variety of reasons, some creditable and some not, a legend has grown up about the treaties that put an end to the last war which is in part responsible for the fact that, though much has been written about these settlements, there has appeared to date no comprehensive and fair survey of the peace negotiations of 1919. Professor Birdsall has at last supplied the deficiency. His book is not a "formal history" but "an analysis and interpretation of the diplomatic factors which shaped the general character of the Treaty of Versailles." A single volume could hardly encompass such a formal history; the book nevertheless deserves to be called history, if history be taken in its true sense, as an interpretation of human events rather than as an undigested catalogue of facts.

The problem of organizing the presentation of so complex an episode as the peace negotiations of 1919 is well handled. Following a sketch of the immediate background of the Peace Conference, the central theme emerges in what amounted to the fundamental conflict between Wilson's New Order expressed in the Covenant and the ambitions of the various Allies. The author shows conclusively how the Allies played upon Wilson's irrevocable attachment to the League in order to secure specific concessions from him. The controversy over the adoption of the mandates principle is a good illustration. On the strength of her own record during the War Germany would have had a very weak case in objecting to an outright annexation of her colonies. But the Allies were bound, preliminary to the Armistice, by their acceptance of the Fourteen Points as bases of peace. Professor Birdsall lays considerable stress on the contractual nature of this acceptance.

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France proved in the main the principal stumbling-block to the enactment of the Wilsonian program. This could have been expected, for the French slogan was not so much democracy as "the war to end war", which, in view of France's position and experience, meant elimination of the German menace. French policy was clear and consistent in this respect; French designs on the Rhine and the French attitude toward various phases of the settlement were essentially applications of the dominant French desire for security. The central French thesis was a strong one and was so recognized by the Americans in Paris in 1919, but the specific demands of the French doubtless ran counter to the American program and outlook. In order to do this situation justice one must see it whole; Professor Birdsall seems to be torn between his understanding of the French position and his dislike of French tactics. The heading "dismemberment of Germany" is somewhat misleading, for Germany was not dismembered; also, as the author himself recognizes, "the territorial settlement contained in the various treaties negotiated at Paris is still, with all its faults, the closest approximation to an ethnographic map of Europe that has ever been achieved."

The Japanese question affords a good illustration of the author's judiciousness, of his grasp of the factors in the situation, and of his understanding of diplomatic procedure. This is somewhat less true of the treatment of the Italian problem. To speak of "the jackal tradition of Italian politics" is to confuse rather than to enlighten; one cannot assimilate 1940 to the pre-1914 period. It is true that the programs of the present régimes, Italian and German, are rooted in events that happened long ago; but to ignore the differences would be to be guilty of that "intellectual nihilism" that "eschews all standards of judgment", which the author so rightly condemns. Granting the poor diplomacy of the Italians, their position in 1919 was a particularly difficult one, and, if their intemperate demand for Fiume proved their undoing, it is only fair to say that they were willing to make large concessions elsewhere. The appraisal of the American program, quoted on page 270, would give a somewhat different impression, were the citation more complete.

The Italian problem provides the occasion for a critical discussion of the inner workings and divisions of the American delegation and of the mooted question of the Wilson-House relationship. Professor Birdsall thinks House was too willing to compromise away the Wilsonian program, save on the issue of the League, and he also takes exception to the commonly held belief that Wilson should never

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have gone to Paris. Wilson definitely emerges as the hero of the Peace Conference, "the only man of real stature at Paris". Wilson's rôle and personality will no doubt continue to be a subject of debate. But despite all shortcomings and failures there is no denying the title to greatness which derives from having expressed and attempted to put into effect the well-nigh universal yearnings of mankind twenty years ago. The present situation adds the element of timeliness to the value of Professor Birdsall's able contribution.

NEW YORK CITY RENÉ ALBRECHT-CARRIÉ

Germany Prepares for War: A Nazi Theory of "National Defense". By EWALD BANSE. New York, Harcourt, Brace and Co., 1934, republished in 1941.—xxii, 357 pp., 11 maps. $3.00.

Among the books of the day before yesterday, some are better reviewed today than on the date of their appearance. This is particularly true of those books dealing with a war of the future, which have gone down into oblivion because the wars forecast by their authors did not come to pass. Professor Banse's book is an exception, since the war it envisaged in 1932 has in large measure come about, while some of the aims postulated may still be attempted. This need not cause surprise. For Banse is, in more than one sense of the word, one of the makers of the present war, not as a combatant but rather as a preparer of the mental atmosphere. Every *émigré* from Germany carries in his memory more or less vividly his "own" Nazis (it is a pity that these specimens have never been pooled for the purpose of a history and sociology of National Socialism), and Banse has been in my botanizing drum ever since 1915 when both of us belonged to the same infantry regiment. It was then quite clear that the future fire-eater was a bad case of malingering. In the years of the German Republic, he must have felt equally out of place, teaching geography in one of those technological institutes where the *humaniora* are usually assigned to second-raters or other failures. Then, in Brunswick, which gave an early naturalization to Hitler, the outsider, Banse was one of those resentful academic shadows talking of *Raum* and *Reich*, the biggest words in the German language. He was among the forgotten men brought by the events of 1933 into a place in the sun of the Third Reich.

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A good deal of this old space and empire phraseology is to be found in Banse's book, which insists that "the German Empire was badly overpopulated", and that England, France and Russia, as well as the United States, "had too much room" (pp. 79-80). In 1932, when it was first published and while Hitler was yet *ante portas* of Berlin and Paris, a mere *Regierungsrat* in Brunswick, this was seemingly innocuous. In 1933, Banse promptly became professor of a new science, *Wehrwissenschaft*, because his book, with the original title of *Space and People in the World War*, had anticipated this recently approved science. In this sense, the book is academic, but Nazi-academic. When an English translation appeared in 1934, the Berlin Propaganda Ministry called it irresponsible and had it ostensibly suppressed; but it was clear from the treatment of the author that he was considered merely indiscreet, for he had given away what only the London *Times* and others equally blind refused to see—that Germany would rearm, quietly at first, and eventually would try to do the last World War over again, this time avoiding the old diplomatic and military mistakes. To state the German military resolutions more specifically, it was determined: (1) not to start naval armament too early; (2) not to fight a war on two fronts again; (3) not to spare the neutrals, notably Holland; and (4) to avoid as long as possible offending the United States, "very much underestimated by Germany" (p. 295). After this careful start, Germany would attempt to do what could not be done before, land in England through Ireland as well as across the southern reaches of the North Sea from Holland and the Channel ports; consequently the right wing of the German Army would have to be at least as strong as in the original Schlieffen plan.

To claim that Banse's study of the first World War is the "actual Nazi War Plan" is justified to the extent that this war is indeed a repetition, a "fighting over again". The author could proudly say that the Germans have heeded the science of national defense, of which he wrote a primer, and have avoided repeating their old mistakes, while the Allies have not reviewed and taken to heart their former errors but only their former victories. Defeat, in this instance, is a better teacher than victory.

ALFRED VAGTS

THE INSTITUTE FOR ADVANCED STUDY
PRINCETON, N. J.

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Juggernaut over Holland: The Dutch Foreign Minister's Personal Story of the Invasion of the Netherlands. By EELCO N. VAN KLEFFENS. New York, Columbia University Press, 1941.—ix, 195 pp. $2.00.

When the historian of the future attempts to write a factual account of the European war which broke out in 1939, he may well find the volume under review to be one of his most valuable sources. Written with feeling but also with admirable restraint, the book covers the international relations and hopes and fears of the Netherlands government from August 1939 through May 1940.

The German invasion of Luxemburg, Belgium and the Netherlands began at dawn on May 10, 1940. Twice before, in November 1939 and January 1940, the Netherlands and Belgian governments, because of German military activities near their respective frontiers, had feared the imminence of invasion; yet when the blow actually did fall, it came, says Mr. van Kleffens, like a "bolt from the blue." Apparently the Netherlands Intelligence Service late on May 9 warned the government of impending attack in a five-word message: "Tomorrow at dawn; hold tight." The cabinet thereupon took certain agreed-upon precautionary measures and then tensely awaited events. "From a military point of view," according to the author, "there was little more that could be done. Every man was at his post, all precautions had been taken. Holland was ready to defend her neutrality to the utmost, her conscience clear."

Unfortunately, if the Netherlands government was waiting, as it seemed to be, for even a "two-hour notice" of German intentions, it was doomed to disappointment. About four o'clock in the morning of May 10, without any notice, German soldiers began to pour into the little kingdom as German airplanes dropped bombs on sleeping cities and German parachutists took over Netherlands airports. Only then, after the "complete certainty of German aggression", did The Hague order its ministers abroad to request British and French help. Only then did its "policy of neutrality" cease. And therein, probably, lay one of the fundamental reasons for later events. Throughout all the happenings of the past few years, throughout the opening months of the war of 1939, and even after the German occupation of Denmark and Norway, the Netherlands government tried to maintain a strict neutrality. Apparently it hoped to keep the soil of the kingdom untouched by war through a reliance on German promises and on the strength and courage of its own small population.

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Two hours after the attack began, the German Minister to the Netherlands appeared at The Hague with an explanation of Germany's action and a demand for Dutch submission. Berlin, similar to its stand on previous occasions, claimed to have "irrefutable evidence of an immediately threatening invasion by British and French forces in Belgium, the Netherlands and Luxemburg, prepared a long time beforehand with the knowledge of the Netherlands and Belgian Governments." Once more, also, the victim was warned to submit quietly or face "annihilation". The Netherlands government answered by accepting a state of war with Germany.

The course of the five-days' war is graphically described by Mr. van Kleffens. The Nazi air force soon destroyed the small Netherlands air fleet and then German transport planes easily brought over Nazi soldiers. Meanwhile parachute troops, armed with machine guns, radio sets and mechanized equipment, floated to the ground at various strategic centers throughout the kingdom. The larger cities were subjected to terrific bombings, and the German mechanized forces overwhelmed the small Netherlands guard units. Fifth columnists did *their* share to aid the invaders. Some were native Netherlanders, followers of Anton Mussert and Rost van Tonningen; others were Germans, who previously had entered the country as "tourists", "students", or "salesmen". In addition, some German soldiers wore Dutch uniforms, which previously had been smuggled across the border, along with police, postal and even railway-conductors' uniforms. It was doubtless at least in part the doing of such persons that strategic bridges, canals and waterworks remained intact when they should have been utilized to impede the German advance.

The slaughter was so great that General Henrik Winkelman on May 14, after five days of fighting, ordered the Netherlands soldiers to lay down their arms. But the victorious Germans had been unable to achieve one of their main objectives; they could not capture Queen Wilhelmina, nor the members of her family and government. These, after many dangers, successfully reached Great Britain, there to continue the fight in command of the considerable strength and resources of the Netherlands colonial possessions. It is a sad story which Mr. van Kleffens tells in simple and straightforward language. One cannot but feel with him that "Holland bides its hour: sooner or later, it knows that hour will strike."

WALTER CONSUELO LANGSAM

UNION COLLEGE

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Japanese Expansion on the Asiatic Continent: A Study in the History of Japan with Special Reference to Her International Relations with China, Korea, and Russia. Vol. II. By YOSHI S. KUNO. Berkeley and Los Angeles, University of California Press, 1940.—xi, 416 pp. $4.00.

The appearance of this, the second volume of Professor Kuno's proposed three-volume work on the history of Japanese expansion, will be welcomed by all Western students of modern Japan. Volume I, which was reviewed in the POLITICAL SCIENCE QUARTERLY (Volume LIV, March 1939), presented the story of Japan's continental expansion from earliest times to the collapse of Hideyoshi's Korean campaigns at the close of the sixteenth century. Volume II, here under review, covers the Tokugawa period from the beginning of the seventeenth to the middle years of the nineteenth century.

The organization is similar to that of Volume I. Seven chapters of text discuss the following subjects: Iyeyasu's attempt to make Japan Asia's commercial center, the law of seclusion and its operation, the seclusion and segregation of the imperial throne and the imperial court, the domination of the shogun over the feudal lords, the national transformation and the great literary and classical renaissance, the absolute ruling authority of the shogun and its arbitrary methods, and, finally, the approach of Russia to Japan from the north and Japan's reaction. In an appendix covering one hundred pages the author has reproduced in translation a selected group of significant documents, illustrative of many aspects of the subject, such as: documents revealing Japanese efforts to establish relations with China, state papers exchanged by Japan and Korea during the period of seclusion, papers revealing the relation of the throne to the nation during the Tokugawa period, and, finally, digests of the proposals of such Japanese expansionists as Shoin Yoshida and Sanai Hashimoto.

The bibliography contains approximately 130 Japanese titles. Appended to those titles, relied on most extensively by Professor Kuno in this volume, are brief explanatory and critical notes.

The reader will find a wealth of material on the history of modern Japan—material, indeed, which sheds much light on the expansionist policies of contemporary Japan. Of particular significance are chapters i and ii revealing the transition from Iyeyasu's original policy of making Japan the commercial center of Asia to the adoption of

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the policy of seclusion, and chapter v on the literary and classical renaissance of the middle and late Tokugawa period.

But although Professor Kuno has brought together for the period 1600 to 1860 the findings of much of Japan's ablest scholarship, a major adverse criticism appears to be justified. This criticism applied with equal force to Volume I, and no attempt seems to have been made by the editor of the series to avoid similar failings in Volume II. Since Professor Kuno was writing in English, a language admittedly of great difficulty even for scholars among the Japanese, the editor of the series should have eliminated the wordiness, the needless repetitions and the pronounced ambiguity which mark the style.

There are minor errors of fact, such as ascribing the Treaty of Nanking to the dictation of Great Britain and France (p. 323).

PAUL H. CLYDE

DUKE UNIVERSITY

Our Future in Asia. By ROBERT AURA SMITH. New York, The Viking Press, 1940.—ix, 306 pp. $3.00.

Published most opportunely, at the moment when Japan's southward advance has drawn the attention of the world to Southeastern Asia as never before, this book makes a somewhat unusual approach to the study of the American position in the Far East by emphasizing our stake in the lands which surround the South China Sea: namely, the Philippine Islands, the Dutch East Indies, British Malaya, Thailand (Siam), French Indo-China, and the southernmost provinces of China.

The author, who served in Manila for a number of years as correspondent of *The New York Times,* is primarily concerned with our future in the Philippines. Firmly believing that the granting of complete independence to the Islands on July 4, 1946 in compliance with the terms of the Tydings-McDuffie Law will benefit no one but the Japanese, he advocates earnest search for a formula which will permit continuation after that date of limited American supervision and which will at the same time not run counter to the natural aspirations of the Filipinos for self-rule. Because he realizes that popular support for modification of the Tydings-McDuffie Law might under ordinary circumstances be difficult to obtain, he has undertaken to convince the American people of the importance of American interests throughout Southeastern Asia in the hope of stimulating a demand for retention of our strategic position in the Philippines.

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With this end in view, he devotes the first part of his book to a discussion of the advantages to the United States of the preservation of the political and economic status quo in the South China Sea area, laying special emphasis on American dependence upon certain raw materials which originate there. Moreover, he pleads for the cultivation in the United States of the "empire mind", and proclaims our imperialistic responsibilities in terms of "a new 'White Man's Burden'" which is "the protection of weak peoples against depredation and the continuation of a sovereignty that is benevolent."

In the second part of the book the author turns to a consideration of the Philippine Islands themselves, and it is here, where he can speak with real authority, that he makes his greatest contribution. Americans are absurdly ignorant concerning this rich and populous ward of the United States, and Mr. Smith's informed and fair-minded discussion of "Our Philippine Venture" is unusually enlightening. Most of the remainder of the book is given over to a brief examination of the American legal position in the Far East and to a historical sketch of our relations with China and Japan, with closing chapters devoted to recent Japanese expansion and the problem of the defense of the South China Sea. There is very little in this last third of the book which has not already been said as well or better elsewhere; in fact, the author at times gives evidence of not himself fully understanding the events and forces which he is trying to explain.

On the whole the book is interestingly written, with historical and statistical material worked into the discussion in such a manner as to lend support to the arguments without burdening the reader who may not be accustomed to digesting large quantities of such data. There is a tendency throughout to oversimplify, and at times the author distorts the picture by a too detailed discussion of some one phase—for example, the pros and cons of an American embargo of Japanese goods (pp. 217-238). Although it lacks some of the impartial and scholarly qualities which characterize the studies of current Far Eastern problems now appearing in the Institute of Pacific Relations Inquiry Series, *Our Future in Asia* doubtless will reach a great many readers who would otherwise remain in ignorance regarding the essential factors underlying American Far Eastern policy.

KNIGHT BIGGERSTAFF

CORNELL UNIVERSITY

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Frontiers of the Northwest: A History of the Upper Missouri Valley. By HAROLD E. BRIGGS. New York and London, D. Appleton-Century Co., 1940.—xiv, 629 pp. $5.00.

The idea of the significance of geographical factors in the logical division of history into its component parts is not a new one; but in recent years historical thinkers have given it more attention than formerly, and historical writers have used it with increasing frequency in shaping the outlines of their books. The "regional" history thus produced has been based on a variety of natural forms, such as mountain areas, fishing regions and drainage basins. The present study is devoted to the history of the American Northwest, or the valley of the Upper Missouri River, which region, in the words of the author, "comprises the states of North and South Dakota, Montana, and Wyoming, overlapping into Idaho and northern Colorado." This definition is not exactly true, as, for example, parts of the Dakotas lie in the valley of the Red River of the North, and sections of Wyoming and Montana drain into the Pacific Ocean. But it is roughly true; and it excuses its own inaccuracy by helping the reader more familiar with political than geographical boundaries to grasp the spatial scope of the work.

Nor does the subject of the volume seriously lack unity in other respects. "This area", as the preface declares, "has had a common history. Here the northern herd of buffalo made its last stand and the miners hurried from one new find to another in our last golden age. Here men dug ditches to water their newly tilled fields and rode over ranges that stretched away to the horizon. And here to-day the rodeo and the frontier-day celebration, the dude ranch and the wild-western film strive in vain to recapture an era that has gone forever." The picture of the region that the author presents and the impression that he creates amply bear out this contention. The reader is constantly made to feel, whether the scene is a Montana mining town, a Wyoming cattle range, or a "bonanza" wheat farm in Dakota, that the historical "atmosphere" is constant: there is the same combination of raw wilderness and sophistication, of enormous wealth and threatening want, of present hardship and glittering prospects. No matter where one dips into the book, at the beginning, the middle, or the end, one is almost certain to meet tangible and picturesque evidence drawn from the period itself—photographs, excerpts from private letters, passages from contem-

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porary books and periodicals, and, especially, telling quotations from the local newspapers of the time.

Certainly Professor Briggs has consulted an enormous mass of original material in the course of his preparation of this volume; the fact is even more apparent in the text than from the large and well-classified bibliography, which covers eighteen closely printed pages. It is a pity that the quality of the writing is not comparable to the amount of labor expended on research. But the arrangement of the matter is, on the whole, excellent. "The successive phases of the history of the region are treated in the book's six parts as separate 'frontiers'—those of the miner, the buffalo, the cattle-rancher, the settler, and the farmer." Just why that of the fur trader was not treated separately and first, however, instead of being merged with the buffalo frontier, is not explained. It would have made a perfect introduction to the others, because it came first in time, it found the country in a virgin condition, and it is a naturally fascinating topic. In other respects—printing, format, index, references—the book is uniformly well made.

JOHN PERRY PRITCHETT

QUEENS COLLEGE

Aliens and the Law: Some Legal Aspects of the National Treatment of Aliens in the United States. By WILLIAM MARION GIBSON. Chapel Hill, The University of North Carolina Press, 1940.—xiii, 200 pp. $3.00.

While the author of this work considers, all the way through, the bearing of international law, customary and written, upon the rights of aliens, and in this connection cites decisions of international arbitral commissions as well as discussions of text writers, his book relates principally to the rights of aliens in the United States, as shown by decisions of the courts in this country, both state and federal. He treats of their rights under the Constitution of the United States, the treaties to which the United States is a party, and federal and state laws, rather than of the rights of aliens to enter the country under the immigration statutes and treaties.

Beginning with a chapter on the international law standard, the author discusses national treatment provisions of treaties, most favored nation provisions, property rights, taxation and the right to work. He includes also a short chapter on the rights of aliens in the courts, with regard particularly to juries. In his concluding chapter

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he sets forth his views concerning the development of the laws of civilized states in modern times, and the tendency toward greater liberality with regard to aliens residing or sojourning within their territories.

This book, with its discriminating discussion of decisions of courts in the United States concerning the rights of aliens, especially with regard to property, taxation and personal liberty, should be of use to practicing attorneys and government officials, and in this connection the three appendices indicating and classifying the various pertinent provisions of treaties and state laws should be quite useful. The book should also be of interest to students and teachers of political science, especially the last chapter. It is very timely in view of the extraordinary conditions now existing in the greater part of the civilized world and the possible repercussions in our own country. Even here, suspicion of, and intolerance toward, aliens are likely to become prevalent in some quarters, and the safeguards of the law will be needed more than ever.

In his concluding chapter, after discussing the general tendency toward liberality and expressing the view that this may be attributed not only to economic reasons but also to "philosophical, or even mystical reasons", the author says: "Recent events in the so-called dictatorial or totalitarian states would seem to invalidate this reasoning. These states, however, are exceptional. The condition of aliens in most of the states of the world is what it was before the coming of such dictatorial philosophy and organization of government. We must guard against allowing these dramatic exceptions to be considered the rule. One cannot say whether they are temporary exceptions or whether they are portents of what is to be universal. But this much is true: at the present time they are exceptions, and one can hope, and even feel reasonably assured, that they shall be exceptions of a more or less temporary nature."

RICHARD W. FLOURNOY

DEPARTMENT OF STATE

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BOOK NOTES

Dr. Franklin Le Van Baumer's recent study—*The Early Tudor Theory of Kingship* (New Haven, Yale University Press; London, Oxford University Press, 1940; x, 259 pp. $2.50)—is an important contribution to the history of English political theory. It deals specifically with sixteenth century attitudes toward the position of the king in the state, with particular reference to the immediate effect upon these attitudes of the break from Rome under Henry VIII. For the most part it is based upon a careful study of political discourses written during the period falling roughly between 1530 and 1560, and it contributes in an appendix a valuable bibliography of these discourses, both in print and in manuscript. Another appendix discusses the use of the press by the king for propaganda purposes. Dr. Baumer's findings are not new, though they are documented with a wealth of illustrative material much of which is new. In his opinion, the only outstanding differences between the fifteenth and the early sixteenth century theory of kingship were the recognition of royal supremacy in matters ecclesiastical, and the emphasis upon nonresistance to royal power. He agrees with Professor McIlwain that the king was held to be subordinate both to natural and to positive law. He agrees also with Professor McIlwain that the notion of law-making was still foreign to English thinking and that even the legislative powers of parliament were limited by a fundamental law, though he falls into the common error of maintaining that Coke took this position in the Bonham Case. His discussion of the king's position in matters ecclesiastical is particularly enlightening. He agrees that in such matters the king was recognized as having full *potestas jurisdictionis,* but not *potestas ordinis.* He might not preach, or teach, or administer the sacraments, or absolve, or excommunicate, but he might govern the church, legislate for the church, and, by imposing his own interpretation upon the scriptures, establish the official belief of the church. — CONYERS READ, University of Pennsylvania.

Professor S. R. Dennison previously has presented an analysis of the inadequacies of theories of industrial location (*The Manchester School*, Volume VIII, N. 1, 1937), which clearly demonstrated that

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he understands the problems of theoretical formulations. Accordingly, one looked forward with much interest to the publication of his book, *The Location of Industry and the Depressed Areas* (London, Humphrey Milford, Oxford University Press, 1939; vi, 216 pp. 10*s*.). Now that the book is available, the anticipation seems to have been definitely justified. Professor Dennison finds that most of the literature on industrial location falls into one of two types. One type, empirical and descriptive, is essentially a cataloguing of factors, "with no attempt to formulate them in any schematic arrangement in accordance with some set of general principles" (p. 7). The other general type, notably exemplified by the work of Alfred Weber, is formal and deductive. The assumptions of the Weberian approach, in Dennison's view, are subject to three major strictures. Weber's analysis aribtrarily assumed (1) that a few select factors (and only these) can explain the location of all industries; (2) that the use of technical coefficients is meaningful although it removes the analysis from the realm of prices and costs which obviously are among the primary considerations to those making decisions on industrial location; and (3) that the locational distribution of labor is fixed, neglecting the consideration that "for industry as a whole it is obvious that location is a cause of the distribution of labor as well as an effect" (p. 17). Professor Dennison does not attempt to provide another general theory of location in the place of those he rejects. Rather he is concerned with developing a method of approach that enables him to analyze particular changes in industrial location that occurred in Great Britain in the two *inter bella* decades. For this purpose it is necessary simply to start from the basis of costs. "For any plant about to be established, with a given output and conditions of technique, there are many possibilities of situation. Each situation has, however, its own scheme of costs for the output, and the costs for each situation differ from those associated with the others" (p. 27). In this approach all elements affecting location are included and only those observed, in contradistinction to being assumed, to be important in a given situation are abstracted for special analysis. With this approach and by drawing upon his own surveys made as a member of the staff of the Economics Research Department of the University of Manchester as well as upon the evidence presented to the Royal Commission on the Geographical Distribution of the Industrial Population, Professor Dennison is able to appraise the locational factors that have been actually or allegedly responsible for creating the depressed areas and the shift of British industry to the

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south. The author poses a number of embarrassing questions to those who think the resulting problems of the industrial shifts can be remedied effectively by government control of industrial location or by licensing the locations of new establishments. The inconsistent governmental efforts (because of indiscriminate application) to promote the location of industry in the depressed areas simultaneously with government-fostered migration of workers from the same areas is reviewed in detail. He concludes with some modest proposals for a short-period policy that are based on the character of the changes that have caused the problems as well as on the realization of the heterogeneity of the problems, each requiring its appropriate solution. The conclusion, incisive and realistic, reflects the quality of the entire book.—DANIEL CREAMER, Washington, D. C.

Marxism: An Autopsy, by Henry Bamford Parkes (Boston, Houghton Mifflin Co., 1939; 300 pp. $3.00), has a threefold purpose: to prove that Marxism is really dead; to discover what killed it; and to forestall attempts to resurrect the corpse. The author contends that Marxism has given up the ghost because its adherents obtained power nowhere except in Russia (and there only by adopting un-Marxian tactics), and because a communist revolution is impossible in democratic countries. The reasoning runs as follows: the industrial proletariat, which the author finds to be declining numerically, is too small to gain and hold power through a revolutionary coup; the workers themselves are indifferent to socialism; Marx's diagnosis of capitalism and his prognosis of its downfall are erroneous; finally, insecurity and unemployment can be eliminated, if the middle classes so desire, without destroying capitalism itself. Communism, Dr. Parkes argues, can never fulfill the Marxian promise of freedom, justice, security and peace. By enhancing the power of the state, communism invites political and economic coercion. Communism (or any other type of planned economy) causes inefficiency in supplying consumers' wants. Peace does not follow from communism; nor does war necessarily follow from capitalism. As a philosophy of life, dialectical materialism is false and sterile, leading in practice to cultural stagnation. This refutation of Marxism has the merit of being all-inclusive; it is, in fact, a recapitulation of nearly all the arguments ever directed against socialism. The author, however, fails to consider the eventuality of revolution arising from war. Marx and his disciples held that international conflicts would create the most favorable opportunities for social upheavals; and it would be rash to deny the possibility that the

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present European and Asiatic conflicts may result in extensive communization. In his final chapters, Dr. Parkes outlines a "Program for America" which might be accepted by the numerous class of small property owners. He argues that liberty and prosperity can best be achieved by restricting governmental activities and by returning to the "free market" advocated by Adam Smith and the classical economists. The defects Dr. Parkes finds in capitalism—monopoly prices, underconsumption, insecurity, a parasitical rentier class—can be eliminated by the following measures: high inheritance taxes; reduction of prices by prohibiting corporations from discharging their employees; reduction of the interest rate by governmental intermediation; and transformation of corporations into producers' coöperatives. In realizing this program, the state would probably play a far greater rôle than Dr. Parkes would care to admit; and the state would be directed by the small property owners who are much less interested in transforming capitalism than in becoming rentiers themselves. Although similar programs have never obtained the vitality of Marxism, "autopsies" upon them have already been frequently performed.—HAROLD R. WEINSTEIN, Brooklyn College.

In *The Economics of War* by Horst Mendershausen (New York, Prentice-Hall, Inc., 1940; xiv, 314 pp. $2.75) we have a general theoretical survey of the present war economy with enough historical illustrations to make it very real to the reader. The author takes up the economic war potential, the actual war economy, the position of neutral countries, and even the probable economic problems of the post-war period. In addition, a well-stocked appendix shows by chart and table the distribution of the war potential, the cost of the first World War, how it was paid for, and some striking examples of the "hollow classes" in populations left by the first world conflict. It all adds up to a distressing picture. Politicians who are expecting wars to create miracles that peace-time policies cannot bring will learn much from this sober, yet exciting book. The author suggests a new approach to the problem of *ersatz* goods. Not all war substitutes are of poor quality and high price; for example, there are the synthetic nitrates invented in the first World War and now *buna* which is actually superior to natural rubber for certain uses. The author insists Germany must have a speedy victory, even though she has gained control over the occupied areas. Her chief lack is still oil. However, a nation well equipped with natural resources will not be victorious, unless her raw materials are converted into actual military power. Russia in 1914 was a convincing

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example of poor economic preparation. The fascist countries are better prepared for war at any time, since theirs is virtually a war economy in time of peace. Elsewhere Mendershausen stresses (quite correctly) the dangers to efficiency of too long hours for labor in war time. He also deals with new methods of war financing—Germany's "voluntary" savings and Keynes's "deferred pay"—and argues for honest direct taxation, Keynes's plan or one like it, and the strict avoidance of inflation. Mendershausen treats the problems of priorities, price control and rationing in thoroughgoing fashion. Of the post-war period, he says, "the postwar generation will be a tired lot of people, alienated from peaceful and civilized life, poor, rude, and hysterical. It takes years to heal the 'rejuvenating' effects of a major modern war." Professor Mendershausen's book provides an excellent syllabus for the peculiar problems of the war economy and a clearly written analysis for the general reader. — HENRY S. MILLER, Queens College.

Independent Labor Organizations and the National Labor Relations Act, by Frank T. Bow (New York, Prentice-Hall, Inc., 1940; xiii, 120 pp. $2.00), is a useful guide for employees who wish to form labor organizations limited to the employees of their particular company or plant, and who are anxious to avoid being a party to any violation of the National Labor Relations Act. The author devotes the first quarter of the book to a consideration of the rights guaranteed by the Act and particularly the status of employees who have been accustomed to deal with their employer through the now interdicted employee representative plan. The efforts of these latter employees to convert the employee representative plans into independent unions have been looked upon with disfavor by the National Labor Relations Board and, according to Mr. Bow, this has had the effect of forcing them to join national labor organizations. Most of the volume is concerned with the mechanics of an independent labor organization, its constitution and by-laws, and the procedure to be adopted in the formulation of a contract and in collective bargaining negotiations with the employer. Thus, in effect, Mr. Bow has prepared a manual for independent unions. The information is important not merely for the sound internal working of the independent organization but for the proper wording of the clause on "purpose" which receives such careful scrutiny from the National Labor Relations Board when and if a Labor Board election is sought. The author has made two contributions to the science of labor relations: (1) he has shown that there is a real twilight zone between national

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affiliated organizations and company-dominated unions—the zone of the independent unions formed exclusively of, by and for employees of a particular plant or company; and (2) he has laid down some sound principles to be followed by employees wishing to achieve such organization.—JOHN J. COLLINS, Fordham University.

Herbert Harris, a labor journalist and popular labor historian, is one of the most ardent advocates of peace between the A. F. of L. and the C. I. O. In a brilliantly written volume, *Labor's Civil War* (New York, Alfred A. Knopf, 1940; 298, vi pp. $2.50), he passionately pleads for unity in labor's ranks, lest its social gains achieved under the New Deal become dissipated. He repeatedly warns the two contending factions that protracted strife may alienate public opinion and lead to the enactment on a national scale of such anti-union measures as the Oregon anti-picketing law. Mr. Harris argues very persuasively that the fight between the A. F. of L. and the C. I. O. is not an ideological conflict between craft and industrial unionism as many writers would have us believe. Both have similarly constituted affiliates. The real problem is one of control. Since its establishment, the A. F. of L. has issued charters to its various unions, which have given them virtual labor monopolies in their fields. The strongest bond among the A. F. of L. constituents has been this protection of their respective jurisdictions. All dual or rival movements were dealt with mercilessly. The Federation's policy toward the C. I. O. is no different from its attitude to any previous dual movements. It refuses to yield control. The greatest obstacles to unity in the C. I. O. are John L. Lewis and the communists who fear the loss of their influence and prestige in a combined labor movement. Furthermore, the C. I. O. is very reluctant to submit to an audit of its paid-up membership which is likely to turn out to be about one-half the number claimed. It is unfortunate that Mr. Harris, who is well versed in labor politics and personalities, should be so naïve as to expect any likelihood of a prompt ending to labor's civil war. The most that may be hoped for at present is an armed peace between the A. F. of L. and the C. I. O. which will permit industry to proceed uninterruptedly with its national defense tasks. To achieve this essential point, the C. I. O. will find it necessary to stifle its influential communist minority and the A. F. of L. will have to educate its affiliates that jurisdictional jealousies must be subordinated to national needs. Mr. Harris' advocacy of a strong labor movement as a factor in maintaining mass purchasing power and generating a recovery period is familiar New Deal economic doc-

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trine. He seems unaware of the retarding effects of rigid wage rates and other restrictive union measures upon recovery forces. As a result, he is unduly critical of Thurman Arnold's efforts to break up the "bottlenecks of unionism".—MURRAY ROSS, Brooklyn College.

The book which Professor Max Radin rather modestly calls *Law as Logic and Experience* (New Haven, Yale University Press; London, Oxford University Press, 1940; ix, 171 pp. $2.00) is in reality a survey of the functions and limits of the judiciary in contemporary society. Radin employs his superior wit and his wide historical knowledge to discredit the basing of judgments, in matters civil and commercial and in domestic relations, on attempts to reconstruct past events. He recommends, instead, greater use of the arbitration procedure although by its very nature its interpretative value is valid only for a brief period. Radin's thesis seems closely related to the more recent evolution in the theory of the judicial function at the beginning of which stands Buelow's attempt, at the turn of the century, challenging the declaratory character of judgments and concentrating on their function of creating and constituting new facts. This change in the judicial function seems, perhaps more than Radin would be willing to admit, a consequence of the changes in the structure of legal rules in modern times, their diminishing character of generality. Herein lies also the justification of the *rebus sic stantibus* character of the arbitration award, which Radin emphasizes. The change from established procedures to arbitration may be beneficial in those realms where relationships between the parties are likely to continue, as, for example, in bankruptcy and domestic relations. But where the judgment ends relations between the parties, as in the case of seller and vender, or in an accident, when the covering of the damage has not been transferred a priori to a third party, the relations between the parties is bound to be ruled by a judgment on past events. As the author himself admits—without, however, differentiating between these categories — in those cases arbitration carries with it only procedural advantages. While sharply separating criminal law from penology and treatment problems, Radin upholds the traditional notions, emphasizing especially the need for guarantees against class bias and political intolerance. But also in the sphere of criminal law a differentiation seems imperative. A large number of cases handled by the cumbersome machinery of criminal procedure do not belong in the sphere of personal liberty. They belong rather in the sphere of property interests and in the ever widening twilight zone between criminal and administrative law, where the assumptions,

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on which criminal law is based, do not have the same degree of validity. Radin rightfully stresses the point that the struggle between social groups and major questions of social and economic policy should not come within the province of the trial judge. The author's underlying theory is a pragmatic one. He rejects any philosophical foundation, such as the identity of law and justice, and reduces law to a mere "technique of administering a complicated social mechanism" (p. 163). Strangely enough his book concludes with a postulate for good law — the technique must be performed by "just men". How these positions may be reconciled is difficult to perceive, given Radin's pragmatic outlook.—OTTO KIRCHHEIMER, Institute of Social Research, New York City.

In the confusion of international politics today, it becomes more than ever necessary to rely for factual information concerning the sovereigns, parliaments, parties and press of the countries of the world on the *Political Handbook of the World 1941* (New York, Harper and Brothers, 1941; 200 pp. $2.50) edited, as usual, by the thorough and capable Walter H. Mallory, executive director of the Council on Foreign Relations in New York. This latest volume in the series, dating from 1928, contains the customary useful and concise information covering all countries from Argentina to Yugoslavia as of January 1, 1941. In the light of the day's war news, one cannot but wonder whether the next issue of the handbook will still present data on such states as Belgium, Bohemia-Moravia, Bulgaria, Denmark, Hungary, League of Nations, Luxemburg, Netherlands, Roumania and Yugoslavia, and whether there may be many new ones, like Croatia, for example. In looking through some of the earlier issues of the series on his shelf, the reviewer was struck by two things in particular. One was the circumstance that the series, in all its brevity and terseness, provides a superb factual political history of the world during the past decade and a half—reflecting all the major changes in governmental forms, party programs, political personnel, and newspaper policies. The other, brought home as clearly as can be done only in an outline, was the number of political changes which have occurred since 1928, when the handbook still contained such names as Albania, Austria, Estonia, Irish Free State, Latvia and Lithuania, and when there were no entries for such regions as Manchukuo, Slovakia and Vatican City. And so the years pass, and countries rise and fall, but the *Political Handbook of the World* remains as indispensable and handy as ever. — WALTER CONSUELO LANGSAM, Union College.

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Rocky Mountain Politics (Albuquerque, The University of New Mexico Press, 1940; viii, 304 pp. $3.00), edited by Professor Thomas C. Donnelly, is a long needed study of one of the most picturesque, if not one of the most important, political areas in the United States. In contrast with other regions, the clearly distinguishing features of this political region, it is agreed by the eight authors who contribute to its study, are: its spaciousness, its color, its lack of institutionalization in social, political and economic matters, and, consequently, the immense importance of personalities. These factors, except for the last, though interesting and important, do not lend themselves to a precise analysis of the politics of this region. If there has been one factor overshadowing all others in determining political behavior in the eight states of Utah, Colorado, Nevada, Wyoming, Idaho, Montana, New Mexico and Arizona, it has been and is personalities. No more colorful leaders have appeared from any section than Bill Borah, Tom Walsh, Bronson Cutting, Burton Wheeler, from the Rocky Mountain states; not to mention others whose names have gone little beyond their states. Yet, as the authors emphasize, these men were not native to the region. It was their adopted land. But so is it the adopted land of most of the residents. Many of the older residents can remember when their parents came to live there. So it remains still — a section of frontier politics with all that that implies in American culture. Economically, the section has not been exploited. The area is not developed industrially and little effort has been made to industrialize it. It is still primarily a source of raw products and a market for processed goods. The book is interestingly written. It can be read as short essays on each of the states studied. If there is a criticism of this study, it arises from the method adopted of handling it by states. This has resulted in some unnecessary repetition and has contributed no small part to the feeling, when the study is read throughout, that it is not yet a region, but eight states each going its own way; and if a pattern or a trend is found applicable to all it derives from no conscious or predetermined thought on the part of the inhabitants. Professor Donnelly is to be congratulated on having done this job which has been awaiting the hand of the skilled political analyst. — RAY F. HARVEY, New York University.

The third and final volume of *Gustav Stresemann: His Diaries, Letters, and Papers*, edited and translated by Eric Sutton (New York, The Macmillan Company, 1940; v, 636 pp. $6.50), covers the three years from the admission of Germany into the League of Nations in

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September 1926 to the death of the German Foreign Minister in October 1929. Prominent among the topics covered are Germany's entrance into the League, the Stresemann-Briand conversations at Thoiry, the signing of the Paris Pact, the replacement of the Dawes Plan by the Young Plan, the struggles at the Hague Conference on Reparation, the *Anschluss* movement, and the exigencies of party politics in the Weimar Republic. In each case there is interesting confirmation of, but little important addition to, specialized knowledge of the events concerned. The volume leans more heavily on extracts from Stresemann's diaries than did its predecessors, probably because the ailing foreign minister, finding it necessary in these last years of his life to observe longer periods of rest, was able to put into writing more of his thoughts and hopes and reflections. The difficulties encountered by Stresemann in winning concessions from the former Allies, especially the French, and the apparently even greater difficulties facing him when he asked his countrymen to recognize and accept these concessions, form the dominant theme of the book. Well might he have penned at any time what he once wrote to a friend: "Things are pursuing their wonted, *i.e.* uneven, course." Clearly evident, also, are the foreign minister's continued emotional loyalty to the idea of monarchy and his opposition to dictatorship in any form. Speaking in May 1928 following the receipt of an honorary degree from the University of Heidelberg, he said: "May all the currents of understanding between the nations come ultimately to this, that the generation of to-day . . . may be able to look forward to a long period of the peace and freedom that will result from the true establishment of the right of nations to self-determination; of a respect for the culture, the religion, and the speech of every man in whatever State he may live. . . ." Mr. Sutton deserves the thanks of all students of recent events for having undertaken and completed so well so extended a task of editing and translating. — WALTER CONSUELO LANGSAM, Union College.

In *Guatemala, Past and Present* (Minneapolis, The University of Minnesota Press, 1940; xii, 420 pp. $5.00), Chester Lloyd Jones has presented his thesis in three main divisions: I, Political Development; II, Economic Advance; III, Social Life. The chapters in each division usually begin with the Spanish conquest in the second quarter of the sixteenth century and end with the present. Covering four centuries of time, the material, very skilfully presented though it is, can do no more than produce a series of imperfect pictures. The imperfections are much less frequent in the recent period. And it

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should be understood that the imperfections are primarily the consequence of the lacunae of monographs of adequate scope and variety on the numerous aspects of Guatemalan experience. The author has done much to overcome this lacundity by combing such sources as were available to him. The present reviewer greatly appreciates the fact that Professor Jones has not set forth his account with icy barriers surrounding it; rather, the author has leaned heavily upon his vast fund of information on Latin America in general and placed the Guatemalan story in its broader setting. His story is indeed a clear-cut cross section of Latin-American experience. From the fact that the citations to large volumes of material are placed on forty-six pages in the back of the book, and from other evidence, one would suspect that the author or the publisher has attempted to clothe the volume with a popular dress. Whether this suspicion be well founded or not, the volume does not appear in a costume the most intriguing to the society lady who has only fifteen minutes a month to devote to things cultural. The book is attractive in appearance, it is not too long, it has sixty-two attractive photographic reproductions, the citations are in the back, and the style is clear; but the account is buttressed with much factual material, the style is dignified rather than lurid, and the conclusions are sane rather than sensational. In short, the book is more for the thoughtful than for the public. A bibliography, a map, a note on Spanish pronunciation, and an index primarily of proper names constitute additional features of the volume. Only a half dozen typographical errors have been noted. Professor Jones and the University of Minnesota Press have placed the historical profession especially in their debt for an excellent piece of work.—LAWRENCE F. HILL, Ohio State University.

The ability of Hans Kohn to present systematic analyses of current events within the framework of long-range forces is again demonstrated in *Not by Arms Alone* (Cambridge, Harvard University Press, 1940; ix, 161 pp. $1.75), which is a continuation of his two other small, but important, books, *Force or Reason* and *Revolutions and Dictatorships*. The underlying thesis is an eloquent argument for "a clear-sighted and courageous pessimism, free from all illusions, prepared for the worst, but with an unwavering faith in the human values of Western civilization and a determination to stand up for them." This theme runs through Kohn's chapters dealing with the totalitarian philosophy of war, academic freedom in our time, the problem of Central Europe (as expressed in the legacy of the Habsburgs and Czech democracy), education for the coming era,

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as well as two chapters, entitled somewhat vaguely "Illusion and Disillusion" and "Coalesce or Collide", which propound the co-operation of free peoples to preserve the rational and liberal patterns of Western culture. The author's ability to perceive the historical antecedents of the world-wide trends of recent years should interest all political scientists, and particularly those who are still undecided whether political science consists of empirically gathered facts, without philosophical deductions, or of the much desired integration of "what is" into "what ought to be."—JOSEPH S. ROUCEK, Hofstra College.

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